

~~THE~~
Clerk's Assistant
IN THE *Francis White*
PRACTICE
OF THE
Ecclesiastical Courts:

CONTAINING THE
Method of Proceedings there.

Extracted from

The best BOOKS of PRACTICE,
And more regularly and clearly laid down than
has hitherto been done.

INTERSPERSED WITH
Some few OBSERVATIONS in Matters of LAW.

By the Reverend

WILLIAM COCKBURN, LL.D.

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PRACTICE

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Method of Proceedings there

The best Book of Practice
and clearly laid down than
has been seen

By the Author

WILLIAM COCHRAN, LL.B.

DUBLIN
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No. 1, St. Michael's Street

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7, 8. Executor paying the Legacy to the Guardian, whether afterwards to be troubled by the Minor.

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23, 24, 25. *In Causes of Correction the voluntary Promoter to be made a Party, and the Judge (on Account of the Reverence due to him) to be passed by; unless it appears that the Grievance was committed by his meer Office, and he then may be convened, and punished.*

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27, 28. *Appeals from Grievances follow the Nature of the Principal Cause, and in what they differ from Appeals from Definitive Sentence.*

29, 30. *Grievances to be proved from the Acts, Cases where they cannot.*

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37, 38, 39. *Cases in which the Appellat should consent to the Judge immediately, and proceed in the Principal Cause.*

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13, 14, 15. Commission to be present-
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and a Monition for Payment.

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remitted to the Judge from whom, and the
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compelled to Payment; and in what Case
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not to be confirmed.

7, 8, 9, 10, 11, 12. Whether after
Sentence is pronounced, and the Cause re-
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13. Taxation of Costs may be in Pre-
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22, 23, 24. In Appeals from Griev-
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ation of Costs.

25, 26, 27, 28, 29, 30, 31. In what
Cases the Compensation may be prevented,
and a Sum taxed for either Party.

THE

T H E

INTRODUCTION.

WHILE the Ecclesiastical Jurisdiction subsists ; and it is, upon many Occasions, not only convenient, but necessary to have Recourse to it ; the following Treatise will appear serviceable : For in it is contained the general Practice of the Spiritual Courts, extracted from the most approved Books, and clearly and regularly laid down, and the Alterations made in the Law by Statute, or Canon, carefully observed, and such Statutes, or Canons, exactly referred to.

It will prove advantageous to young Practitioners, who in this will meet a proper Guide ; and the Clergy themselves will find some Benefit from it : For by this they will be enabled (where skilful Practitioners may be wanting, as in some Country Dioceses) to direct the Proceedings in their own Cause.

If it will not be useful to the Gentlemen of the Common Law, it may at least satisfy their Curiosity ; and while

Form

Form and Method are in a Manner essential for asserting Right, and recovering Property, there must be an apparent Necessity for a Work of this Kind.

If this therefore contains any Instruction, and will bring any publick Advantage; the Expectations of the Author will be satisfied, and the Pains expended upon it fully recompensed.

And as the Design of it is to point out the Way to Justice, and it was chiefly undertaken upon that Principle: I hope the Intention will appear laudable (however it may be executed) and will meet with a favourable Reception.

But if the Judicious and more Experienced find it incompleat and deficient, I wish it may excite them to form a more perfect Work, that every Intricacy and Perplexity be removed, and the Access to Justice rendered open and easy.

THE

SUBSCRIBERS NAMES.

A.

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Mr. Mathias Archdekin.

B.

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a

Mr.

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D

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Mr. Richard Dorman, Attorney.

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The Reverend George Evans, A. M.

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The Reverend Thomas Fell, Surrogate of the Diocese
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Mr. Patrick Fitzpatrick.

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Mr. Walter Gills, A. B. Trinity College, Dublin.
Mr. William Goggin, Attorney.
The Reverend Mr. Oliver Grace.
Mr. William Gregg, Notary Publick, Register of Cork.

H.

Robert Hamerton, Esq;
Mr. James Hamilton, Attorney.
Mr. Thomas Harrison, Attorney.
Mr. Thomas Hastings, Trinity College, Dublin.

Mr.

SUBSCRIBERS NAMES.

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The Reverend Thomas Heweton, L. L. D. 6 Books.
The Reverend John Heydon, A. M. Vicar of Enniscorthy, County of Wexford.

I.

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Henry Jesse, Esq;

K.

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Benjamin Kearney, Esq;
William Knareborough, Esq;

L.

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Hercules Langrishe, Esq;

M.

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Mr. Æneas Murrey, Attorney.

O.

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P.

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Robert Palmar, Esq;
The Reverend John Pellissier, D. D.
Mr. Swift Perry.

The

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S

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W.

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The Reverend Oliver Wheeler, A. M.

Pat. Wemys, Esq;

The Reverend James Wilks, Vicar of St. Michaels in
the Isle of Man, and Episcopal Register of that
Diocese.

THE

T H E

Clerk's Assistant.

C H A P. I.

Of Causes of Spiritual Conufance.

SECT. I. **T**H E Causes within the Ecclesiastical Jurisdiction are chiefly these following:

If Perjury be committed by either the Witnesses or Party, in any Cause depending in the Spiritual Court; the Party injured, or any one else may promote the Office against such perjured Person in a Cause of Perjury; and if he be convicted, he is to be canonically punished; and the perjured Person is to be cited to answer Articles concerning the Good of his Soul, and especially manifest Perjury committed by him in an Ecclesiastical Cause, and before an Ecclesiastical Judge, at the Promotion of such a Person, naming the Promotor.

Perjury in an Ecclesiastical Cause.

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§ 2. It

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I.

§ 2. It is held by some that Persons may be convicted of Perjury, who swear only to their Belief; provided they swear concerning a proper action of their own, lately committed; for if they answer any Position containing such Action of theirs, that they do not believe such Position to be true; if the Truth of the Position be proved, they are to be condemned for Perjury.

§ 3. But this is doubted by others; and in Matters of Fact committed by themselves they should not be sworn to their Belief, but to the Truth of those Facts, whether they have been committed; and if they swear only to their Belief, they may be compelled to answer more fully.

§ 4. If a Clerk commit Simony, he may be proceeded against from the meer Office; or at the Instance of a Party: and so may all others concerned in his Crime. *

Usurer punished.

§ 5. An Usurer, who takes, directly or indirectly, above the legal Interest, may be proceeded against and punished.

§ 6. If

* See Can. 35. Car. I.

Spiritual Counsante.

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§ 6. If any one lays violent Hands I.
upon a Clerk, (provided he is not sued ^{Laying violent Hands}
for a pecuniary Satisfaction) he may be ^{on a Clerk.}
covenanted, and punished; tho' the Clerk
may have Amends for the Peace broke
in the King's Temporal Courts at the
same Time.

§ 7. Brawlers in the Church, or Brawlers.
Church-yard are likewise punishable.

§ 8. If any one is accused of Adul- Adulterers,
tery, the Practice of Bawdry, Drunk- &c.
eness, Blasphemy, Absence from
Church, not paying nor contributing
to the Building of his Parish Church,
or of not procuring Books for the same,
he may likewise be punished.

§ 9. An Executor, subtracting Le- Legacies for
gacies left for pious Uses, may be com- pious, Uses.
pelled to pay them by the Ecclesiastical
Judge from his meer Office; or at the
Promotion of the Church Wardens of
that Parish where the Poor live for
whose Use they were left. And other
Legacies may be recovered by the Le-
gatees.

§ 10. If any one prevents the last Temerary
Will of the deceased from being full- Administra-
filled tion.

Spiritual Counsance.

CHAP. filled, or having its proper Effect; or
L hinders an Inventory of his Goods to be
 made, and his Goods to be appraised;
 the Executor or Administrator may promote the Office against him; and Proof being made thereof, the Judge may pronounce him to have fallen into the Sentence of Excommunication, as in the Case of Temerary Administration; and he is not to be absolved, until he satisfies the Party as well as the Church.

Substraction
of Proxies.

§ 11. If a Rector, Vicar, or any other Person substracts from an Archbishop, Bishop, or Archdeacon Proxies due on Account of his ordinary Visitation; he may be sued in a Cause of Substraction of Proxies or Procurations.

Substraction
of Pension.

§ 12 If any Yearly Pension issuing from any College, Bishoprick, Cathedral Church, Deanry, or any other Church is due to either the Rector or Vicar of another Church; they may sue in a Cause of Substraction of a yearly Ecclesiastical Pension.

Jactitation of
Tythes or
Pension.

§ 13 If the Rector or Vicar of one Church pretends or boasts, that in Right of his Church, such and such Tythes, or Pension is due to him from the

Spiritual Conscience.

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the Rector or Vicar of another Church; CHAP.
he may be sued in a Cause of Jactitation I.
of Tythes, or yearly Pension.

§ 14. If any one speaks reproachful Defamation.
Words, tho' not defamatory, that is,
Words denoting any Crime, on Ac-
count of which canonical Purgation
might have been imposed on the Party
of whom such Words were spoken:
such Party may sue in a Cause of Defa-
mation, or Reproach.

• § 15. But it is to be observed, that
Suit must not be for Money, but for
the Correction of Sin, *pro Salute Animæ*;
and it has often been judicially deter-
mined at Common Law, that the Mat-
ter of the Defamation must be Spiritual,
and merely Spiritual; that is, mixed
with no Temporal Matter, and deter-
minable and punishable in the Spiritual
Court, as Whore, Adulterer, &c.

§ 16. If Fees due to a Proctor be Substraction
subtracted from him by his Client; he of Fees.
may sue in a Cause of Substraction of
Salary or Fees due to him in an Ecclesi-
astical Cause. Qu. *Whether a Prohibi-*
tion does not lie?

B 3

§ 17. If

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I.

Spoliation.

§ 17. If one and the same Patron present two Clerks, the one to the Rectory, the other to the Vicarage of the same Church, and both be admitted: if one spoil the Produce, or gather it cut upon the Ground; the other has a Right to sue him in a Cause of Spoliation.

Mortuaries.

§ 18. Mortuaries may be sued for, where they are accustomed to be paid, as also personal Tythes; but it is held by some that you cannot have the Oath of the Party.

Substraction
of divine
Service.

§ 19. If there has been any Chappel built in any Village, or Hamlet, and the Rector or Vicar where the Hamlet lies has been accustomed to celebrate divine Service there, either by himself or Curate: if he refuses to continue it, he may be sued in a Cause of Substraction of divine Service by any of the Inhabitants of the said Village.

Seat in
Church.

§ 20. If a Person who has a Right to a Seat in the Church is disturbed in his Possession by a Stranger; or if any one boasts of a Right to the same Seat; he may sue the one in a Cause of Perturbation of his Seat, that is, disturbing
ing

Spiritual Conusance.

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ing him in his Seat, and the other in CHAP.
a Cause of Jactitation of a Right to sit I.
in such Seat.

§ 21. If a single Man shall treat Marriage with the Father of a Spinster about Portion contracting Marriage with such Spinster; and the Father consenting, promises to give a certain Sum in Marriage with his Daughter, and the Marriage being solemnized, he refuses to pay such Sum: he may be sued in a Cause of Subtraction of a Marriage-portion on Account of Marriage.

§ 22. But if such Contract, with the Promise, be not in Writing, by the Statute against Frauds and Perjuries, it seems to be out of his Power to recover it.*

§ 23. And there are many other Causes which are of Ecclesiastical Cognizance; for the old Canons are in Force as far as they contradict not either the Common or Statute Law of this Kingdom.

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* 7. Gul. III. Sess. 1. Cap. xii. 29. Car. II.
C. iii. En.

CHAP. II.

Of the Distinction between, and Differences of Causes.

Causes of
Office and
Instance.

SECT. 1. **A**LL Causes are divided into Causes of Office and Instance: Causes of Office are mostly Causes of Correction, although there are some of Instance that may be called so too.

Plenary and
Summary.

§ 2. And Causes are also distinguished by the Title of Plenary and Summary Causes; Plenary are those in which the Order and Solemnity of the Law are exactly observed; so that if there is the least Infringement, or Omission of that Order, the whole Proceedings are annulled; and in these there must be Contestation of Suit, a Term to propound all Things, and a Term to conclude. Summary are those in which such Order is dispensed with, although in these if you proceed plenarily, the Proceedings are valid.

§ 3. In

Differences of Causes.

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CHAP.

II.

§ 3. In the Court of Prerogative all Proceedings are Summary, and there particularly lies the Cognizance of Wills whose Testators died possessed of *bona notabilia* in distinct Dioceses: *Bona notabilia* are Goods, Chattels, Specialties or Debts, amounting to the Value of five Pounds: Specialties make *bona notabilia* where they are, not where the Debtors live; and Judgments are *bona notabilia* where the Record is.

Bona Notabilia.

§ 4.* No Traveller dying in his Journey shall have the Goods about him denominated *bona notabilia*: Where Probat is given in the Prerogative upon Presumption of *bona notabilia*, it is not in itself null, but only reverfible.

§ 5. These following Causes are all Plenary; all Testamentary Causes except in the Court of Prerogative; Causes of Substraction of Legacies, and of Tythes; Causes of Defamation, but Plenary by a Statute † in this Kingdom, upon Causes. a Petition of either Party, the Court may in these proceed Summarily: Causes of Divorce; Causes of Dilapidation; Causes

* Can. 56. Car. I.

† 6. Geo. I. C. vi.

CHAP. Causes of Jactitation of Marriage;

II. Causes of Subtraction of Procurations;

Causes of Subtraction of a yearly Pension; Causes of Perjury at the Instance of a Party; Causes of Simoniackal Pravity at the Instance of a Party; all Causes of Correction from the Office voluntarily promoted; Causes of Usurious Pravity at the Instance of a Party; Causes of Laying violent Hands on a Clerk at the Instance of a Party; Causes of Impediment of Marriage.

§ 6. All Causes of Appeal where in the first Instance they have been Plenary, must be so in the second; except before the Delegates, where all Proceedings are Summary: And some Causes are reckoned favourable Causes and have many more Privileges than other Causes, such as Matrimonial Causes.

C H A P. III.

Of Citations, Service, Return, and Appearance thereon.

SECT. I. **N**O one is to be cited out of his Diocese, or that of his peculiar Jurisdiction where he lives; for ^{Citing out of the peculiar Jurisdiction,} *Actor sequitur Forum Rei*, but in these following Cases, 1. Where Excess be committed, or Duty neglected by the Bishop, or any his Ecclesiastical Judge; 2. In all Causes of Appeal; 3. Where the Bishop is afraid and will not proceed against the Party; 4. Where the Bishop or Ordinary of the Place is interested or prejudiced in the Cause; 5. Where the Bishop renounces his Title, and by Requisition gives Liberty to proceed; 6. Where Suit is for the Subtraction of a Legacy, where the Will has been proved in the Prerogative; and in other Cases as above, which particularly appertain to the Prerogative.

§ 2. Citation issues under the Seal and Name of the Judge; in which the ^{Citation.} Name

General Proceedings.

CHAP. Name of the Promoveant, the Name of

III. the Impugnant, the Cause for which

he is cited, the Place and Time of Appearance are to be specified; and this may be served upon the Impugnant, his Wife, or any of his Family above sixteen Years of Age, by leaving a true Copy after shewing the Original.

§ 3. There are other Primary Citations called *Edictals*; such as are against the Dean and Chapter of any Cathedral; which are served by affixing them to the Doors of their Chapter-house: or against the Provost, Fellows, and Scholars of a College; which are served by affixing them to the Gate of the College; and so against any other Corporation or indefinite Numbers of Men; and such are of the Nature of publick Edicts; and such Corporations must appear by their Syndic lawfully constituted.

Edictals.

§ 4. If the Person to be cited absents and conceals himself; upon the Return of the first Citation, the Proctor alledging that he hides himself, and cannot be found, and praying a Citation, *Viis et Modis*, it shall be decreed; and it is to be affixed to the Door of the House, or the

General Proceedings.

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the Parish Church of the Person to be served, for Half an Hour; and afterwards a true Copy is to be left there. CHAP. III.

§ 5. And by the modern Practice, if Suit be in a Superior Court; the Proctor before the Court Day appointed for the Return of the Citation, (if the Person has lived at a Distance in an inferior Jurisdiction) upon the authentic Certificate of the Mandatary, that he could not be found; may go to the Judge, or his Surrogate; and before a Notary Publick pray and obtain a Citation *Vius et Modis*.

§ 6. An authentick Certificate is a Authentick Certificate under the Seal, and signed by the Judge of any inferior Court, that the Mandatary has certified, or made Oath that Impugnant was searched after such a Day in such a Place; or that he was served in such and such a Manner by him.

§ 7. This about authentick Certificates is literally taken from *Oughton*, and is somewhat perplexed; but I understand the Practice to be this; that upon Oath that the Party cannot be found to be canonically cited, (whether this

General Proceedings.

CHAP. this Oath be made before the proper

III. Judge, or a distant Judge who certifies
 such Oath to have been made) if by
 the Oath it appears that the Party absconds on Purpose, a Citation *Vitis et Modis* issues; if the Party is beyond Sea, then a publick Edict to be affixed in the Place where Merchants resort.

Excommu-
 nication up-
 on false Cer-
 tificates.

§ 8. If a Person be unjustly excommunicated from a false Certificate; he may appear personally, or by his Proctor, and alledge that the Certificate is false, and that he was not served with Citation; which he may prove by shewing that he was in another Place, distant from that Place wherein the Mandatary says he served him, at the same Time wherein he certifies he was served.

§ 9. But he must make Oath that he will obey the Laws Ecclesiastical; and must deposit the Expences of his Contumacy *apud Acta*: and he is to be absolved only to a Day, until he proves his Allegation; which if he does, he is to be absolved in General; and the opposite Party condemned in Costs.

§ 10. If

General Proceedings.

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§ 10. If he does not prove his Allegations, the Excommunication is to be confirmed; and he is not to be absolved, until he makes Satisfaction for that, for which he was excommunicated; and pays the Costs.

CHAP.
III.

§ 11. Or if any one who is excommunicated can prove, that he did not live for Half a Year before in that Parish, where the Citation, *Viis et Modis*, was served; or that he was enquired and sought after upon the primary Citation in another Parish; although the Citation, *Viis et Modis*, was served in his own Parish; he has a just Cause of Appeal, or Complaint before the same Judge; and must obtain.

§ 12. But his Appeal should be not only from the Sentence of Excommunication, but from the Decree for the Citation, *Viis et Modis*, upon a false Certificate: for the primary Citation is here null; and none but Vagabonds should be cited without such by, publick Edict, *Viis et Modis*.

§ 13. Although the Impugnant, not cited at all, should nevertheless be excommunicated for not appearing; and should

CHAP. should afterwards appear, and object against the Certificate to obtain Absolution; the Proctor for the Promovent may proceed in the principal Cause, and give in his Libel, during that very Term assigned the Impugnant to prove his Objections.

Citation to
shew Cause.

§ 14. On the Day on which the primary Citation is to be returned, if the Party cited does not appear, the Service being proved; the Proctor for the Promovent, having first exhibited his Proxy, and prayed that it be admitted; or being constituted immediately at the Acts by the Promovent, shall accuse his Contumacy, pray that he be pronounced contumacious; and (he being pronounced contumacious) shall pray a Citation against him to shew Cause why he should not be excommunicated; and the Judge may either decree it, or expect him the next Court Day.

§ 15. And if upon the Citation to shew Cause, he, when cited, does not appear; his Contumacy must again be accused, and he pronounced contumacious; and a Citation to come and see himself excommunicated sent out: and by a Canon in this Kingdom, a Mandate

General Proceedings

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date with such Citation, directed to the Minister or Person officiating in the Church, where the Person to be excommunicated should resort; requiring him publickly to read the Citation, and to warn the Party of his Danger, if present, and if not, to admonish the People to signify it to him; and no Sentence of Excommunication shall be read, until the Judge is certified that the Mandate has been executed a Fortnight before the Time of Excommunication*.

CHAP. III.

Citation to see himself Excommunicated.

§ 16 And if he does not appear upon this, the Proctor, again accusing his Contumacy, as before, shall pray that he be excommunicated; and the Judge (he being thrice called and not appearing) shall pronounce him contumacious, and decree that he be excommunicated; and if he be a Priest, shall read the Schedule, or Sentence of Excommunication against him.

Party Excommunicated.

The Judge

§ 17. But if the Impugnant appears any Time that Day, (for all that Day is appointed for his Appearance) he shall be absolved; and pay only Six-
C pence

* See Can. IV. of Q. Anne.

CHAP. pence for the Act, and reading the

III. Schedule : And if his Proctor leaves an
 { authentick Proxy with the Register it
 is held sufficient ; and * he shall not
 be admitted *Reclus in curia*, until he
 pays the Costs of his Contumacy.

§ 18. By the modern Practice of
 some Courts, if the first Citation be
 not served, it may be continued to the
 next Court Day ; but there may be
 some Doubt of the Legality of this
 Practice.

§ 19. No Proctor shall procure or
 appear for any Party †, unless he is
 constituted by the Party either in Court ;
 or by a proper Ratification and Appro-
 bation under his Hand : and no Proc-
 tor before Contestation of Suit can sub-
 stitute another ; for until then he does
 not become *Dominus Litis*, Master of the
 Suit.

§ 20. But it is held, that a Proxy
 empowering him to substitute before,
 as well as after Contestation is good : if
 a Client dies before Contestation, the
 Proctor cannot litigate or defend the
 Cause ;

* Can. 70. Car. 1. † Can. 77. Car. 1.

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Cause ; otherwise if after ; unless in CHAP.
personal Actions which die with the III.
Person.

§ 21. If a Proctor obtains Sentence ^{Proctor cea-}
for his Client, and the Adversary ap- ^{sing to be a}
peals, both Proctors are deprived of ^{Proctor.}
their Office ; and nothing can be done
by one against the other : and if the
Appellant obtains a remissory Sentence,
and Letters of Remission to the Judge
from whom ; nothing can be done in
Presence of the Adversary's Proctor,
but the principal Party must be cited
anew.

§ 22. But it is otherwise in Appeals
from Grievances, for Proctors cease not
to be Proctors from such Appeals ; be-
cause the Proxy is in Force until defi-
nitive Sentence be given : and upon a
remissory Sentence the Appellant is not
obliged to cite the principal Party to
see further Proceedings.

C H A P. IV.

Of admitting a Person in Formâ Pauperis, and of the Incapacity of some Persons to Sue, and particularly, of Excommunication and Absolution.

Pauper admitted.

SECT. I. **A** Person may be admitted in *Forma Pauperis*, if he swears himself not worth Five Pounds, his Debts being paid: and if the Adversary requires it, he must swear that when he comes to a more plentiful Fortune (if the Suit be for Tythes or Legacies, &c.) he will pay the principal Matter with the Costs.

§ 2. The Adversary before the Pauper swears, may prevent it, by proving him worth the Sum; and specifying his Effects; which if he does; he pretending Poverty shall be condemn'd in Costs: and he may reply by shewing himself in Debt above the Value of his Goods, or equal to them: but in this Case

Case he shall not have Costs against his Adversary; because he proved that he had in Effects above the Value of five Pounds, and could not be supposed to have acted against him *mala fide*: in Causes of Defamation there is no being admitted a Pauper.

CHAP.

IV.

§ 3. An excommunicated Person has no right to sue; nor can there be any Decree passed at his Suit after Excommunication is objected against him: and to prove him excommunicated, the exhibiting Letters of Excommunication under the Seal of the Judge, excommunicating him, will be sufficient.

Excommu-
nicated Per-
son cannot
Sue.

§ 4. The Excommunication must be proved within eight Days after it is objected against him; and all Things done before the Objection are valid; for the Excommunication does not annul what went before, but those Acts that follow the Objection.

§ 5. An outlawed Person likewise will be hindered and stopped in his Proceedings by producing the Writ of Outlawry against him; Minors also without a Guardian, nor any Commu-

Outlawed
Persons not
to Sue.

CHAP. nity without a proper Syndic, cannot
IV. sue.

Denunciato-
ry Letters
of Excom-
munication.

§ 6. When any One is pronounced excommunicated; the Proctor on the opposite side, should pray Denunciatory Letters of Excommunication against him; and send them under the Seal of the Judge to the Rector, Vicar, or Curate, of the Parish Church of the Party excommunicated; to be denounced and published in the Time of Divine Service, on some Sunday or Holyday.

§ 7. They should be given in due Time, the Day before, or the Morning of that Day before Prayers, on which they are to be denounced; and the Rectors, Vicars, or Curates should take Care to denounce them accordingly, otherwise they may be suspended; and they must return the said Letters to the Party, with a proper Certificate on them, containing the Name and Sirname of the Person who published them; and of the Time and Place where they were published.

§ 8. As there are forty Days allowed for the excommunicated Person to
come

come in to make Satisfaction, and be
absolved, before the Writ de *Excom-*
municato capiendo can issue; if he stays
out, and prays Absolution only before
the Fortieth Day; the Judges may
from their meer Office, or their Office
promoted, proceed against him for
Contempt of the Ecclesiastical Juris-
diction: and unless he can give good
Reasons for such Delay, may enjoin
him Penance, and condemn him in
the Costs made in this Suit.

CHAP.
IV.
Contempt
of Ecclesiastical
Jurisdiction.

§ 9. For the Delay and Hardship
would be very great, which the Litigi-
ous would bring upon Litigants in this
Respect, if they came off unpunished;
for if a Person should be excommuni-
cated and denounced in the Beginning
of the Suit for Non-appearance, and
should hold out to the Fortieth Day;
and afterwards for not giving his Per-
sonal answer; and after that for not ap-
pearing when cited to answer more
fully; and so through many Stages of
the Suit: the Delays would prove in-
tolerable, and almost infinite.

§ 10. As every excommunicated
Person before he be absolved, must
swear to obey the Laws Ecclesiastical,
and

Excommu-
nicated Per-
son contu-
macious af-
ter Absolu-
tion.

CHAP. and the lawful Commands of the Ordinary; if after he swears, he falls under the same Sentence from his Contumacy; he may be proceeded against in a Cause of Perjury; and must be condemned, unless he can purge and clear himself from such Contumacy.

§ 11. As all Persons excommunicated are denounced as such in the publick Church, every one that converses with them, (unless from an Inclination to reclaim them) is excommunicated *ipso facto*, and if they stand excommunicated for a Year after Denunciation, they may be proceeded against in a Cause of heretical Pravity.

§ 12. If a Person excommunicated will not appear within Forty Days after Denunciation, the adverse Proctor shall exhibit the Original denunciatory Letters with the Certificate on the Back of them; and shew that the Person excommunicated has been denounced above Forty Days:

Letters Significantatory for an Excommunicato capiendo.

§ 13. And then he should pray Letters significantory to the King's Majesty to obtain the Writ *de Excommunicato capiendo*; upon the Delivery of which the

the High Chancellor shall issue such Writ directed to the Sheriff of the County where the Party dwells: Who shall (if found) imprison him until he shall appear by his Proctor, satisfy his Adversary, and be absolved: No Inferior Judge can signify for this Writ, but Bishops alone.

CHAP. IV.

§ 14. If any Person be excommunicated for not paying the Costs of Suit, or the principal Matter sued for; he is not to be absolved, until he deposits the Sum he is condemned in at the Acts; nay although he alledges that he paid it, he is to deposit it:

§ 15. Because when he was first admonished to pay on such a Day, and afterwards cited to shew Cause why he should not be excommunicated for not paying; he might appear and alledge Payment; and also if an excommunicated Person should be absolved upon alledging Payment, without depositing the Sum in Contest at the Acts, if the Allegation was false, such Absolution would be highly detrimental, and vexatious to the opposite Party, who would be obliged to have him admonished a new, and excommunicated again.

Excommu-
nicated Per-
sons absolv-
ed.

If

CHAP.

IV.

§ 16. If a Person excommunicated and denounced be taken upon the Writ; or if the Writ be issued against him; he must deposit the Expences the Promovent has been at in procuring that Writ, and prosecuting the Suit so far; and he must swear to obey the Laws Ecclesiastical:

*Excommuni-
cato liberando.*

§ 17. Then the Judge shall absolve him, and signify to the King's Majesty for his Writ *de Excommunicato liberando*, in the same Manner as in applying for the Writ *de Excommunicato capiendo*.

§ 18. Excommunicated Persons who through their Obstinacy have been committed to Prison, and thence unduly delivered, without giving sufficient Caution and Security to obey the Authority of the Church; may be retaken, and committed upon the Writ *de Excommunicato recipiend.*

CHAP. V.

Of giving in a Libel, and the Power of a third Person's Intervening in the Suit.

SECT. I. **A**FTER the Impugnant appears, the Proctor for the Promovent may give in his Libel that very Day he appears, or must do it the Court Day after; which if he does not, the Impugnant by a Canon * in Force in this Kingdom shall be dismissed with his Costs; which the Judge shall Tax to thirteen Shillings and four Pence by the Stile of some Courts, and that without the Oath of the Party.

§ 2. The Proctor giving in his Libel ^{Libel.} shall pray that it be admitted, and that the adverse Proctor answer next Court Day; the Judge shall admit it as far as by Law it is to be admitted, and order the opposite to answer, he dissenting, and praying a Copy of it.

In

* Can. 69. Car. I.

CHAP.

V.

§ 3. In Summary Causes it is not necessary to give in a Libel; but you may *libel viva voce* at the Acts and pray to proceed Summarily; and the Proctor for the Impugnant is to dissent, and this infers Contestation of Suit; for express Contestation is not necessary in such Causes.

§ 4. If any Error or Mistake shall appear from the Proceedings, in either the Name or Sir-name of the Promonent or Impugnant; or in any Sum of Money libelled for; or in the Church contested between two Clerks; or in any other thing, so that the Mistake appears from the Proceedings, and the Acts done in the Cause:

Error Revoked.

§ 5. In any of these Cases the Proctor shall alledge that there is such a Mistake in such a Thing, in such a Part of the Libel, and pray that it be subducted; and that such and such a thing be inserted in its Stead; and the Judge shall decree it; nay the very Revocation of the Proctor is sufficient; and whoever amends must pay Costs.

Intervention of a third Person.

§ 6. When it appears to a third Person, that his Interest is any way concerned

concerned in any Cause, that either re-
pects his Goods or Person, he may in-
tervene; but he must prove his Interest
in the Cause, if it be denied; which if
he does, he shall obtain Costs.

CHAP.**V.**

§ 7. And first he may intervene in
a matrimonial Cause, where the Wo-
man he has been contracted to, or has
solemnized Marriage with, is sued by
another; and he may intervene here
in any Part of the Suit, even after Con-
clusion; whether he comes to assist
the Party convened, or to remove her
colluding with the Promovent.

**In matrimo-
nial Suits.**

§ 8. And this he may do although
he had Notice of the Suit; and of the
Proofs made by the Promovent; be-
cause this is a favourable Cause; and
if he alledges a former Contract, or
Marriage, and swears that he does not
do this, with a malicious Mind to put
off the Suit; he must be admitted at a-
ny Time:

§ 9. But this is not the Case in o-
ther Causes, for the Suit is not to be
stopped upon the Intervention of a
third; but he must proceed in the
same State in which the Cause was
when

CHAP. when he intervened ; unless he comes
 V. to remove the Impugnant in Collu-
 sion with the Promovent to his Preju-
 dice :

§ 10. And then he must specifically alledge the Collusion ; for a general Allegation will not be sufficient ; but the Intervener must alledge that he comes to remove the Impugnant, and to detect the Collusion between him and the Promovent to his Prejudice.

In a Cause
 of double
 Quarrel.

§ 11. Secondly in a beneficial Cause, a Cause of double Quarrel ; if Suit be for your Benefice between a Bishop and another Clerk presented to it insisting upon Institution : In which Case the Judge to whom the Complaint is made may pronounce for his Jurisdiction, and Decree the Querelant to be instituted ; if the Bishop appears not, nor alleges your Right, and that the Church is full ; in this Case you may then intervene, and shew your Interest.

In a Testa-
 mentary
 Cause.

§ 12. Thirdly in a Testamentary Cause ; if a large Legacy be left to a Man, and the Executor colluding with the next of Kin should fraudulently agree with them (in order to deprive him

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him the Legatee of his Legacy) that they should sue him the Executor, to prove the Will in proper Form by Witnesses; and that he would willingly and designedly fail in the Proof: Then that Legatary may intervene and have the Will proved.

CHAP.
V.

§ 13. Fourthly in the Case of a Legacy, where there are not Assets sufficient to pay all the Legataries; if the Executor should desire some of his Friends and Relations to sue him for their Legacies, which amount to the Value of the whole Effects, that he by the Sentence of the Court might be obliged to pay them, and so freed from the Suit of the other Legataries; they should then intervene to recover a proper Proportion.

§ 14 But it is a Question; whether an Executor knowing that there are more Legacies due, is freed by this Sentence from the other Legataries? However it has been so adjudged.

CHAP.

C H A P. VI.

Of Exceptions and Answer.

SECT. 1. **A**FTER the Libel is given in, and the Impugnant has received a Copy of it from the Register, as he is entitled to it; for if a Copy is denied him a Prohibition will lie; he is then to give his Exceptions or Answer.

Exceptions.

§ 2. And some Exceptions regard the Person of the Judge, such as a declinatory Exception to the Court; and this should be given in immediately before all others; for otherwise you would consent to the Judge, and could not give it afterwards:

§ 3. Others respect the Person of the Litigant, as all Exceptions to the Lawfulness of his Person; as if a Minor sue without a Curator, or Guardian; a Corporation without a Syndic; a Proctor without a proper Proxy; an excommunicated

communicated Person (which Objection CHAP. VI.
of Excommunication may be proposed before or after Contestation) or a Person not interested; which Objection also may be made before or after Contestation.

§ 4. And others respect the Cause, as an Exception to the Obscurity, or Uncertainty of the Libel; or that the Cause does not belong to their Jurisdiction; or that there is a Suit depending in another Court for the same thing; and an Exception that the same Cause was decided before; but this will not hold in matrimonial Causes; an Exception of a false Proxy may be given even after Sentence, because it renders every Thing that passed null and void.

§ 5. Exceptions are generally given in in Writing, and the Promovent is to reply in the same Manner; and if they contain only Matter of Law, the Judge (upon the Point being argued, and debated by Advocates) may pronounce for, or reject them:

§ 6. But if they contain matter of Fact, a probatory Term is to be assigned

CHAP. ed; and if the Excipient proves the
 VI. Fact, he is to be dismissed with his
 Costs; but if he fails in Proof, his Ex-
 ceptions are to be rejected, and himself
 condemned in Costs of Delay: And
 the Proctor that gives in Exceptions
 may be compelled to swear, that he
 makes them not with a malicious De-
 sign to give Delay.

Contestation. § 7. If no Exceptions are made,
 Contestation follows by the Answer to
 the Libel; which Contestation cannot
 be in the Absence of the Promovent, or
 his Proctor; but either of them must be
 present: And by this the Proctors on
 both Sides become Masters of the Suit.

§ 8. By the modern Practice, on the
 Day the Libel is given in, a Motion is
 made by the Promovent's Proctor, that
 the Impugnant's Proctor answer the
 next Court Day; and if he answers not
 that Day, another is made that he an-
 swer the Court Day following, under
 Penalty of the Law; and if he answers
 not that Day, another is made that he
 answer the Court Day following on
 Pain of Excommunication; and if he
 does not answer then, he is to be ex-
 communicated.

And

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VI.

§ 9. And he may contest the Libel affirmatively, by confessing it; or negatively, by denying it; and in plenary Causes he should regularly give in his Answer Articulately to each Position of the Libel: But this seems necessary only in Personal Answers; for in judicial Answers an unqualified Confession, or Denial, seems to be sufficient.

§ 10. And in plenary Causes without Contestation (although the Promovent proves his Libel) all is null, unless the Impugnant confess the Contents of the Libel in some Part of the Suit; for by the Party's Confession all Nullities are taken away.

§ 11. The Proctor for the Promovent alledging that he believes he can be better assisted in this Cause by the Answer of the Party Principal; may, by praying it, get a Decree for his Answer; and this Motion is properly to be made by an Advocate.

§ 12. The Proctor for the Impugnant should dissent to this Decree, and pray that probatory Terms be assigned to the Promovent; which the Judge

D 2

shall

CHAP. shall assign: Three Court Days being
 VI. the usual Terms, unless the Weightiness
 of the Cause requires more.

Probatory
 Terms.

§ 13. The Impugnant's Proctor should dissent, that he may have it in his Power to appeal, if the Term be too prolix; and the Promovent's Proctor may appeal, if they be too short. The probatory Term never lapses when a personal Answer is decreed, until such Answer is given.

Personal Answer in
 Causes of
 Defamation.

§ 14. In Causes of Defamation a personal Answer should not be decreed, only as far as by Law, that is, to all such Facts as do not criminate; as to the Jurisdiction and Residence of the Party: for by the Laws of these Kingdoms no one is obliged to criminate himself.

§ 15. However it is laid down that after Publication, when the Defamation is proved, such Answer may be decreed; or if it be decreed before, that it shall not be executed till after Publication:

§ 16. For it is agreeable to the Civil Law, that all Persons be compelled (notwithstanding

withstanding they be condemned, and CHAP. proved guilty) to confess their Guilt; VI. but the common Law abhors compelling any one to condemn himself.

§ 17. If the Proctor for the Promov-
ent imagines that he can be relieved Answer of
the oppo-
site Proctor.
from the Answer of the opposite Proctor
to any Position of his Libel, before he
prays the Answer of the Party Principal,
he may swear that he believes for his
Party, that he can faithfully prove the
Contents of his Libel; and pray that
the adverse Proctor answer such and
such Positions upon Oath; which shall
be granted.

§ 18. But this should be done be-
fore a Decree for the principal Party's
Answer be demanded; although it is
held it may be done afterwards:

§ 19. And this may prove highly
useful in Causes of Restitution of con-
jugal Rites, and in Causes of Divorce:
For the Proctor perhaps is Instructed that
his Client will confess the Marriage;
and therefore the Proctor for the Wife
may have Alimony assigned her im-
mediately upon such Confession, when
perhaps the Client would stand out,
and prove contumacious.

C H A P. VII.

Of Personal Answers.

Personal
Answer.

SECT. 1. **P**ROCTORS should first of all after Contestation get the personal Answer of the Party Principal; because perhaps from this the Truth may appear, and so the Trouble of producing Witnesses be prevented.

§ 2. And the Party is to be served with the Decree for his Answer, and if he will not appear, to be excommunicated; or if the Party is in Court, there is no Occasion for the Decree for his Answer to be issued out; but the Party is to be produced, and sworn faithfully to answer.

Commission
for taking
personal
Answer.

§ 3. If the Party is Infirm, or lives at a great Distance from the Court, a Commission may be granted to Persons Residing near him, to swear and examine him within such a Day certain, without fixing a Place; and a Day is to be assigned for transmitting the Answer:

§. 4. On

§ 4. On which Day, or rather the Day following, for that whole Day is due; the Party not answering can only become contumacious; and the * Certificate of the Decree for his personal Answer shall be continued on that Day; and if the Answer is not transmitted, and he will not give his Answer, he shall be excommunicated.

§ 5. If a Person privileged is sued, the Commission is taken out at his and the Promovent's Costs; but if he sues, it is taken out at his Cost: The Party absent being to answer, if he prays a Commission to take his Answer, should take it at his own Cost: But if his Absence is necessary, as through Sickness and Infirmary, it is in that Case held by some, that it should be at the Cost of the Adversary: In matrimonial Causes the Party must appear personally.

§ 6. If the Party be sworn to answer, by the modern Practice he is to be admonished to appear personally, and to give in his Answer the next Court Day; which should be drawn by his Advocate, or Proctor, and signed

Party Principal sworn to Answer.

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* See Sect. 13, 14.

CHAP. ed by them; and if he does not give

VII. his Answer, his Contumacy is to be

accused, he to be pronounced contumacious, and in Penalty of his Contumacy to be excommunicated.

§ 7. But formerly he was to be admonished to undergo Examination on the Positions of the Libel within a certain Time, or to appear the next Court Day, and see himself excommunicated; and he was to be examined as any other Witness; and this is still in the Discretion, and at the Pleasure of the Judge.

Party produced in a criminal Cause.

§ 8. If a Party is produced in any criminal Cause to answer, he should protest that he means not to Answer any captious, or criminous Position; or if he does, that such Answer be deemed null and void: And this Protestation seems necessary, for the Party without it would recede from the Benefit of the Law in this Case.

§ 9. If the personal Answer of a College, or any other Corporation, or a Bishop, or other privileged Person is desired; there should be a Decree for the Parties principal to appear by their Syndic

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Syndic lawfully constituted, and sufficiently instructed to answer; and if they will not appear by such Syndic, they are to be excommunicated.

CHAP.

VII.

§ 10. There must be a special Proxy for the personal Answer of such College, or Corporation given to the Syndic; and in this not only all the Positions to be answered, but the distinct Answers to each Position are to be inserted; otherwise the Answer is neither full nor sufficient.

Answer of a Corporation

§ 11. The Proctor or Syndic so constituted shall exhibit this special Proxy, and swear *in animam* of his Constituent; and if the Answers are not authentick for the Want of an authentick Proxy; or if they are frivolous and given with Design to delay, and put off Sentence; if this appears to the Judge, the Party is to be excommunicated notwithstanding such Answers.

§ 12. If the Party does not answer fully; the Judge is wont to condemn him in Costs, and to make him answer over again: If the Judge takes Time to deliberate whether the Answer be to be admitted; or the Party giving it to be excom-

Answer faller.

CHAP. excommunicated, as the Case is ; the

VII. Certificate of the Decree for personal
 ~~~~~ Answer is to be continued ; for if there  
 is a Discontinuation, the Party cannot  
 be excommunicated, but must be cited  
 a new to the same Purpose.

§ 13. These are the Words of *Ough-*  
*ton*, and seem to be not a little unintel-  
 ligible ; for there is no Reason for  
 continuing the Certificate, if the Ser-  
 vice was proved, or the Certificate re-  
 turned.

Continuing  
 Certificates.

§ 14. The Meaning of continuing a  
 Certificate is this ; a Citation, or Mo-  
 nition is returnable on a precise Day ;  
 perhaps it is executed, but not certified  
 on that Day ; then the Proctor alledges  
 on the Day that such Citation is to be  
 returned, that he verily believes it is  
 executed, but that he has not received  
 a Certificate ; and prays the Certificate,  
 that is, the Oath of Service may be  
 continued to the next Court Day : So  
 that continuing the Certificate is only  
 taking a longer Day to prove Service.

§ 15. If the Party Principal confess  
 any Thing in his Answer through Mis-  
 take which is false ; as if he confesses  
 that

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that such an one was lawful Farmer of CHAP. VII.  
the Tythes of such a Rectory, when at  
the Time he confesses that he was law-  
ful Farmer, the Tythes really and  
truly belonged to another Person :

§ 16. Or if he acknowledges that he had at such a Time so many Acres of Wheat ; when in reality he had not so much ; which was unknown to him at the Time of his Confession : He must appear Personally, or give a special Proxy to that Purpose, to revoke his Mistake.

§ 17. And if the Error appears from legal Proof, or the Confession of the opposite Party, the Judge shall decree that it be revoked ; although it is held that the Revocation itself is sufficient.

Revoking  
Errors in  
Answer.

§ 18. If the Answer be not full enough, the Proctor for the Adversary should alledge that it is not full, and should pray that it be decreed, that the Party be cited to answer more fully ; or he may take Exceptions to it, and have them discussed as other Exceptions.

§ 19. And if it appears from the Answers of the Party, and the Posi-  
tions

To Answer  
more fully.

CHAP. tions he was to answer, that the Answer was not full; the Judge shall decree that the Party be cited to answer further; or if he doubts about it, he may assign the next Court Day to hear his Will upon the Petition for a further Answer.

§ 20. And on that Day he may (after hearing Advocates on both Sides for Information) decree or reject the Petition, and condemn either the Party not proving his Allegation, that the Answer is not full, in Costs of Delay; or if he proves it, he may condemn the other Party, not answering fully, in the Costs made; and order him to answer more fully.

§ 21. When the Order for a fuller Answer is made; the Party is to be cited to appear on such a Day to answer more fully such and such Positions under Penalty of the Law and Contempt thereof; and if he does not appear on that Day, nor answer, he is to be excommunicated: But the Practice is now to take the Libel for confessed.

§ 22. Formerly a Day was appointed, within which he was to be ordered to answer more fully, or to appear on such

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such a Day certain (in case he should CHAP.  
not have answered more fully) to see VII.  
himself excommunicated.

§ 23. If the Person cited appears, and shall alledge not sufficient Cause for not answering; he is not to be sworn anew, but to be admonished and compelled by Virtue of his former Oath, to answer more fully the next Court Day, under the Penalty of being pronounced as having confessed the Libel.

§ 24. Or when he appears when cited to answer more fully, if this Clause be in the Citation, (to appear personally to answer more fully such and such Articles by Virtue of the former Oath taken by him on such a Day) he may be admonished that very Day, to answer such and such Articles, under the Penalty of being declared as having confessed them :

§ 25. And if he does not answer, The Libel  
he is to be pronounced contumacious: taken for  
confessed.  
and in Pain of his Contumacy, at the Motion of the adverse Proctor, to be declared for having confessed such and such Articles.

§ 26.



## CHAP.

## VII.

§ 26. If the Party refuses to take the Oath, to answer personally, he shall be excommunicated; and not pronounced having confessed, unless he was first sworn :

§ 27. And in plenary Causes if a Proctor refuses to answer, and delays beyond a proper Time, he is to be excommunicated; and you must proceed against him for his Answer upon Oath, in the same manner as against the Party Principal; and being pronounced as having confessed, the Adversary should accept that Pronunciation, as far as it makes for his Party.

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## C H A P. VIII.

*Of the Probatory Term, and the  
producing Witnesses.*

SECT. I. **I**F from the Answer of the Impugnant, the Promovent's Intention be not proved; or on the other Hand, where any Matter or Allegation has been given in by him, if the Impugnant has not proved his Intention from the Promovent's Answer to it; upon probatory Terms being assigned (which are three Court Days according to the Style of Courts, or more according to the Exigency of the Cause) he is to produce Witnesses:

§ 2. And if before the Terms lapse, Renouncing he thinks he has sufficiently proved his <sup>probatory</sup> Intention, he may renounce them, and <sup>Terms.</sup> pray not only Publication, but a Term to hear Sentence from the first Assignment in summary Causes, and a Term to propound all things, and so on conclude in plenary.

§ 3.

## CHAP.

## VIII.

§ 3. But this cannot be done, if the Adversary has accepted the probatory Terms assigned, and protested either on the Day they were assigned, or before the Proctor renounced them, that he will use them; and then the opposite Proctor can only pray Publication of Witnesses examined on his Part.

§ 4. And although the Adversary, accepting the Terms, should propose and prove nothing during those Terms; yet, he may afterwards propose, and prove any Matter he pleases.

§ 5. But as he has hindered the opposite Party from proceeding in the Cause, by his accepting his Terms probatory; if he proves nothing on those Terms; he is justly to be condemned in Costs of Delay.

§ 6. Witnesses must be produced within the probatory Terms, although, if produced and sworn, they may be examined after; if a Term be given in Pain of Contumacy, it cannot be renounced to the Prejudice of those who are contumaciously absent.

§ 7. The

§ 7. The probatory Term may be renewed by the Judge upon proper Reasons; such as if the Cause during the Term, or most of it was under Compromise; or if the Party principal had been in Prison, or so dangerously sick that he could not prosecute the Cause.

§ 8. And there are other Impediments that intitle him to a Renewal of the Term; but if these are denied by his Adversary, he must prove them; which if he does, he shall obtain Costs.

§ 9. The Party to whom probatory Terms have been assigned, should apply to his Witnesses to appear within the Terms, and offer them their *Via-tica* and Expences; and upon Oath made that such Offer was made them, and that they refused, or delay to come; upon praying it, he may have a compulsory Citation against them.

§ 10. But it is held, that the bare Allegation of the Proctor is sufficient without an Oath; and Care should be taken that the probatory Term lapse not before the Return of the Compulsory; and the Proctor should pray that

E

the



CHAP. the probatory Term be continued until the Return of the Process :

Compulsory  
Citation *Viis*  
*et Modis.*

§ 11. And if on that Day he shews, that all Diligence had been used to cite them, and that they lay hid, and could not be found ; he may have a compulsory Citation *Viis et Modis*, against them; and the probatory Term is to be continued to a competent Day.

§ 12. And if they do not appear, they shall be proceeded against as other contumacious Persons ; but if the Party compelling, and by a Compulsory endeavouring to make them appear does not use all his Diligence in prosecuting the contumacious Witnesses to the utmost ; Proceedings should not stop to the Prejudice of the opposite Party, but he should pray to conclude in the Cause.

§ 13. Nay, although he has used his utmost diligence, and has excommunicated, and perhaps imprisoned the Witnesses ; yet that Suits be not infinite, the Judge may conclude in the Cause ; but the aforesaid Witnesses, if they appear, are to be admitted even after Conclusion.

§ 14. If

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VIII.

§ 14. If the Party producing Witnesses does not settle with them for their Expences; they may of themselves, <sup>Expences</sup> or by their Proctor pray that (before <sup>for Witness-</sup> es. they are sworn) their Expences be decreed them; which the Judge shall tax according to their Condition, and Distance from the Court.

§ 15. And they may pray a Monition against him, if he be absent, to pay the Expences; or if present, he may be personally admonished to do so; and if he does not, he shall be compelled by ecclesiastical Censures to pay them with Costs.

§ 16. No Compulsory against Witnesses, nor Commission for their Examination should be decreed, after the probatory Terms expire.

§ 17. If the Witnesses appear, the Proctor should produce them, and pray <sup>Witnesses</sup> that they be admitted, and sworn; <sup>produced</sup> the <sup>and sworn.</sup> opposite Proctor should propose any objection he may have to their Admission, before they be sworn.

E 2

§ 18. Or

## CHAP.

## VIII.

§ 18. Or he should dissent at the Time of their being produced; and should protest that he will except against their Depositions and Persons, as far as they make against the Intention of his Party; and they are to be sworn.

Interrogatories against Witnesses.

§ 19. Then the Adversary should dissent and pray a Term to be assigned him to administer Interrogatories against them; and in these he should insert that they assign their Cause of Knowledge, and otherwise protest against the Nullity of their Examination; and this is necessary, for in some Cases their Depositions are good without it.

§ 20. And the Judge shall assign him a Day for forming his Interrogatories; or upon a proper Affidavit, more or less, according to the Exigency of the Matter.

§ 21. Then he shall deliver his Interrogatories in Writing to the Register before the examination of the Witnesses; and he should be careful and exact in conceiving his Interrogatories, for

## General Proceedings.

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for otherwise they may make against CHAP.  
his Party. VIII.

§ 22. If the Persons produced be Persons of Credit, he may say at the Time they are produced, that he accepts and approves of their Persons as far as they make for his Party; but that he protests against their Sayings and Depositions as far as they make against his Intentions.

§ 23. And this he should do only, when he thinks they can make for him in their Depositions.

§ 24. A Person producing Witnesses should take Care to produce none that can make against him; for he cannot impugn or renounce their Testimony; and the Impugnant should not produce Witnesses, before produced by the Promovent; for by this he would so approve of their Persons, that he could not after except against them.

§ 25. If the principal Party shall swear that he came to the Knowledge of some Witnesses necessary to his Cause since Publication; if they are

Witnesses  
produced af-  
ter Publica-  
tion.



CHAP. present (unless the nature of the Cause  
 VIII. forbids it) they are to be admitted upon that Oath.

§ 26. Or if they refuse to come, he may have Compulsories against them, unless the Adversary shew that he had Knowledge of them before Publication; or a probable Cause of Knowledge; such as if in a Cause of Defamation, his first Witnesses should swear that the Words were spoken before himself, and those Witnesses he wants now to produce; and in that Case he must particularly swear, that he forgot that they were present, or that he did not see them.

§ 27. If any of the Witnesses produced had their Testimony invalidated from the Exceptions of the Adversary, as Men of bad Fame; of which it does not appear, that the Party principal had any Knowledge; then other Witnesses may be produced by Way of Corroboration; because every Man is presumed to be honest, until the contrary be proved.

## C H A P. IX.

*Of the Examination of Witnesses,  
and Commissions for their Ex-  
amination.*

SECT. I. **W**HEN Witnesses are produced and sworn; to prevent any Combination between them, or their conspiring to swear the same Thing, and to hinder any Dread they may conceive of the Party principal (if present) they are to be examined privately, and separately by the Register.

§. 2. When they are sworn, they are to be admonished to attend the Re-<sup>Examining</sup> Witnesses. gister, in order to be examined by him, at a fixed time; and at that time the Register shall examine them upon their former Oath, and he shall take down their Depositions distinctly to each Article.

E 4

§ 3. If

## CHAP.

## IX.

Correct their  
Depositions.

§ 3. If they have made any Mistake in their Depositions, they may correct such Mistake at the time they are examined by the Register ; or afterwards when they come to repeat their Depositions before the Judge : and they shall sign them that they be not corrupted.

Repeat  
them.

§. 4. And after, such Depositions must be Repeated before the Judge, where they shall be read and acknowledged by them ; in Attestation of which the Judge shall sign them ; and without this Repetition, and Recognition, the Examination is void.

§ 5. The Proctor should take Care that the Positions to be proved be concise and clear ; not doubtful and prolix.

§ 6. If any of the Witnesses be old or infirm, or if they live at a great Distance from the Court ; a Commission for their Examination may be prayed within the probatory Term, and that Term continued.

§ 7. Or if they live in the Neighbourhood, and are sick, or imprisoned,  
upon

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upon Petition of the Proctor the Judge CHAP.  
is wont to decree that they go, and IX.  
examine them.

§ 8. And the adverse Proctor being admonished to be present at the Place where they are to be sworn, (if he thinks it concerns him) and his Fee being first paid him; the Judge at the time fixed, or his Surrogate shall go to the Place; and the Proctor producing them, shall in the Presence of the adverse Proctor, or in Pain of his Contumacy (he being thrice called and pronounced contumacious) produce and swear them; and they shall be examined as above.

§ 9. If the Witnesses live in another Diocese, upon the allegation of the Proctor that they do so; the Judge may send a Commission with a Requisition to the Bishop, Vicar General or Official of that Diocese to examine them; the adverse Proctor at the Time the Commission is prayed being admonished to attend.

§ 10. The Proctor wanting the Commission shall pray that it be decreed for such and such Persons (two to examine Witnesses.



CHAP. to be named on his Side, and two on

IX. the adverse Side by the modern Practice) jointly and severally, to sit in such and such a place; with a power of proroguing and adjourning; having assumed some Notary Publick indifferent to the Parties for their Actuary.

§ 11. And should pray that a Term be assigned the Commissioners to transmit the Commission with the Proceedings thereon; and that the probatory Term be continued, and the adverse Proctor admonished to attend then and there; which the Judge shall decree.

§ 12. The adverse Proctor should dissent to all this, and protest to except against the Persons and Sayings of the Witnesses as far as they make against his Party; and pray that they be examined upon the Interrogatories to be ministered by him, and annexed to the Commission; and that they give their true Cause of Knowledge in each Position.

§ 13. And if he has no Mind to be present at expediting this Commission; he may give his Interrogatories to the Register of the Judge granting the Commission;

Commission; who shall annex them to **CHAP.**  
it, and seal them up in such a manner, **IX.**  
that they be not inspected into by any  
one.

§ 14. If he is present, he may sub-  
duct them, and administer others; and  
the Protestation of the Proctor to except  
as above is highly necessary; for if nei-  
ther he, nor the Party principal is pre-  
sent at the Time the Witnesses are pro-  
duced, so that they are produced in  
pain of their Contumacy in their Ab-  
sence; unless this protestation was  
made, they could not afterwards ex-  
cept against those Witnesses: but it is  
held by others that Exceptions are ever  
allowed.

§ 15 The original Proctor may <sup>substitution</sup>  
substitute one or more Notaries or Li- <sup>from origi-</sup>  
terates to act for him, and he should <sup>nal Proctor.</sup>  
give them a proper Proxy authentically  
sealed; wherein should be declared  
that he will ratify and confirm all and  
every Thing done by such Substitutes  
for him:

§ 16. And the Promovent's Proctor  
should be very careful that such Sub-  
stitution be sufficient and authentick;  
for

CHAP. for if it be not, every Thing done in  
IX. presence of such Substitute is null and  
void :

§ 17. And the Commission is to be presented to the Commissioners, who shall accept it, and having first appointed their Actuary (some Notary Publick to be chosen by themselves) shall order him to read it ; and the Commissioners should decree that they proceed according to the Tenor of it, after he has read it :

§ 18. If the Court granting the Commission shall appoint it's own Register to be Actuary ; he shall read the Commission, and act as Actuary.

§ 19. If the Original Proctor be present, all Things are to be done in his Name, as before the Judge ; but if there is a Substitute, he should first of all exhibit his Substitution, and make himself a Party, for his Substituent :

§ 20. But the Party principal appearing, and acting in his own Name, should protest that he does so, without revoking the Original Proctor constituted by him.

§ 21. If

§ 21. If the adverse Proctor appears not, nor any Substitute for him, his Contumacy in not appearing (after he had been admonished to attend the Commission) is to be accused; and he being thrice called; the Promovent or his Party should produce their Witnesses in Pain of his Contumacy, upon the Libel; or Allegation which is to be annexed to the Commission, and pray that they be admitted and sworn:

§ 22. And the Commissioners shall pronounce him contumacious, and in Pain of such Contumacy admit and swear them, in the same Manner as when produced before the Judge; the Impugnant's Proctor's Name is to be mentioned in the Commission, that the Commissioners may have him called by Name:

§ 23. And the Witnesses produced and sworn are to be examined secretly and separately, as before mentioned; if any Witnesses refuse to come upon Allegation thereof made by the Proctor; and his praying that it be decreed that they be compelled to come:

§ 24.



## CHAP.

XI.

Compulso-  
ries from  
Commission-  
ers.

§ 24. The adverse Proctor being first called, and his Contumacy accused, Compulsories shall be decreed by the Commissioners against them in Pain of such Contumacy; which they can do, because they represent the Judge :

§ 25. But the usual Practice is, that at the Time the Commission is taken out (unless in Cases of Requisition) Compulsories be decreed against such Witnesses; which are to issue under the Seal of the Judge ordering them to appear before the Commissioners at a certain Time and Place mentioned in the Commission :

§ 26. And lest the Days assigned in the Commission lapse before the Service and Return of the Compulsories; the Promovent's Proctor should (having first accused the Contumacy of the adverse Proctor, and he being pronounced contumacious) pray that in Pain of such Contumacy, the Day and Place for further expediting the Commission be continued, and prorogued to such a Day and Place; which shall be done.

§ 27. And

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IX.

§ 27. And it is in general to be observed, that nothing be done, or prayed by the Proctor at whose Instance the Commission was taken out, nor decreed by the Commissioners; but in Pain of the Contumacy of the adverse Proctor, he being first thrice called, his Contumacy accused, and he pronounced contumacious.

§ 28. If the adverse Proctor appears, or his Substitute for him; all Things are to be done as above, he dissenting.

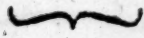
§ 29. When all the Witnesses are examined; the Proctor, at whose Instance the Commission issued, shall pray that they close the Commission and that it be returned; which shall be decreed.

Closing and  
returning the  
Commission.

§ 30. The Notary taken to expedite the Commission shall form a Certificate, or publick Instrument in the Name of the Commissioners, and shall direct it to the Judge granting the Commission:

§ 31. And in this not only the Sayings of the Witnesses, and all the Acts done by Virtue of the Commission must

CHAP. must be inscribed ; but also the com-

IX.  missional Letters, the Interrogatories administered by the Adversary, the Substitutions exhibited (if any) must be annexed ; and this Instrument must be subscribed with the Notary's Name, and sealed with his Seal of Office :

§ 32. And it is necessary, to avoid any Corruption, that each Leaf of the Depositions of the Witnesses be subscribed not only by the Witnesses themselves, but by the Commissioners ; and this Instrument should be authentically sealed in such a Manner, that it be not inspected into, nor read, nor in any Degree corrupted.

§ 33. But it is the usual Practice, and more necessary ; that the Original Proceedings, and Original Depositions be sent in Form of a publick Instrument ; which being done, the Proctor who obtained the Commission (if the Notary assumed will not attend) shall take Care that another Notary on the Part of the Commissioners, and their Actuary, exhibit the Proceedings on the Examination of the Witnesses :

§ 34. And the Proctors on either Side shall then say that they exhibit these Proceedings as far as they make for their Party; and the Proctor, at whose Instance the Commission was, may pray Publication of the Depositions of those Witnesses on that Day; or may postpone it, until compelled by the Adversary to have Publication.

Proceedings exhibited.

§ 35. If the Proctor obtaining the Commission shall alledge proper Reasons (which are many) why the Commissioners could not accept, or could not close the Commission within the Time assigned; it may be renewed, and the probatory Term continued:

Renewal of Commission.

§ 36. But if the Reasons alledged be disproved by the adverse Party, it shall not be renewed; but if he fails in his Objections, he shall be condemned in Costs.



## C H A P. X.

*Of Publication, and Exceptions  
against Witnesses*

Publication. SECT. I. **I**F the Proctor thinks he has sufficiently proved his Intentions, and will produce no more Witnesses, he shall pray for Publication; and that Copies of the Depositions of the Witnesses be decreed to the Parties: The Judge shall publish and decree Copies accordingly.

§ 2. And he may pray Publication before the probatory Term lapses, if his Adversary has not accepted the Term, as before mentioned \* or after it does lapse, whether he has accepted it or not.

§ 3. The Impugnant (if he has any contrary Matter to propose) shall dissent to Publication, and protest concerning his not enquiring into the Sayings of the Witnesses, that is, that he

\* See Ch. viii. Sect. 1, 2.

did not enquire into, and knows nothing of their Depositions : CHAP. X.

§ 4. And if he does not dissent, upon the Objection of his Adversary that he did not dissent ; he cannot propose it afterwards ; because it is presumed that he learned the Words of his Adversary's Witnesses, and what they said ; and upon that Account to have lost the Benefit of a contrary Defence.

§ 5. But although he dissents as above, yet the contrary Matter is not to be admitted, if the Adversary shews that he learned and found out the Depositions of his Witnesses : And he may have the Oath of the Party principal upon that, as also of the Proctor ; not only at the Time he prays that the contrary Matter be admitted ; but afterwards, at the Time he produces Witnesses to prove that Matter.

§ 6. If after Publication it appears that any of the Interrogatories administered by the Adversary are not fully answered ; or some of them not answered at all ; upon the Witnesses denying that they should answer them :

## CHAP.

## X.

Interrogato-  
ries to be an-  
swered.

§ 7. The Proctor alledging the Matter, praying the Judge, and it appearing to him, that such Interrogatories were not answered; may have them cited to answer over again: The opposite Proctor should dissent, that he may have it in his Power to appeal, if the Matter be not to be answered.

§ 8. Exceptions against Witnesses are either General, or Particular; General when you mention or specify no particular Crime; Particular, when you charge them with some special Matter to invalidate their Testimony:

§ 9. Although no Exceptions be given in against Witnesses; yet if it appears from the Proceedings that they are incompetent, they prove nothing.

Exceptions  
against Wit-  
nesses.

§ 10. The Impugnant (if he has no particular Instructions) shall except against the Witnesses in general; that they are single, repugnant to each other, infamous or criminous, Friends or Relations to the Party producing them, &c. which Allegation of his he should pray to be admitted; which the Judge shall admit as far as by Law; the adverse Proctor dissenting, and protesting against the Nullity of it.

§ 11. Par-

§ 11. Particular Exceptions are given in in writing, containing the particular Crime or Reason why such a Witness is not competent; you may have the principal Party's Answer upon these, a Term to prove them, and all Things as in proving a Libel.

§ 12. Crimes committed by Witnesses since their Examination invalidate not their Depositions given before.

An Exception that a Witness committed Felony, or is suspected of it, is not to be admitted; because the Ecclesiastical Court cannot determine, nor take Cognizance of Felony; but an Exception that he was convicted of Felony is admitted.

§ 13. Every Proposer of Exceptions is obliged (at the Petition of his Adversary) to swear that he does not propose them to give Delay; or else to take the Oath *de Calumnia*. Proposer of Exceptions.

§ 14. The promovent Proctor and Advocate are obliged at any Time of the Suit to take this Oath (if required) upon



CHAP. Pain that the Cause be dismissed with

X.

Costs \*.

The Promovent becomes in Exceptions Impugnant, and the Impugnant becomes Promovent.

§ 15. The Promovent may propose his corroboratory Matter to support either the Persons, or Sayings of his Witnesses within the Term assigned the Impugnant to prove his Exceptions; or after that Term lapses, if he dissents to the Publication of these Witnesses produced on the Exceptions, and protests that he has not enquired into what they deposed.

Reprobatory  
Witnesses  
excepted to

§ 16. Or he may except after Publication against the Persons of the Impugnant's reprobatory Witnesses, or against their Sayings, provided that he alledges, that they were subordinated and corrupted to swear such and such Things which he must mention; and if he be required, he must swear that he believes, he can prove such Subornation.

\* See Can. 80 Car. I.

§ 17. But

§ 17. But if in the Impugnant's Exceptions it be alledged that such a Witness committed Adultery with such a Woman ; without specifying the particular Time and Place ; and the Witnesses to prove this, swears that the Adultery was committed at such a particular Time, and in such a particular place.

§ 18. Here the Party Promovent after Publication may alledge Matter directly contrary to this ; without alledging that the Witnesses was corrupted ; and object Perjury to him.

Because before Publication on account of the too great Generality of the Allegation, he could not foresee how to purge, and clear his Witness from the Crime objected against him.

§ 19. Witnesses cannot be produced against those Witnesses brought to prove Exceptions against the reprobatory Witnesses of the first probatory Witnesses, according to that Rule, *in Testem Testes, et in hos, sed non datur ultra.*

## CHAP.

X.

Proctors  
cautious in  
Exceptions.

§ 20. Proctors should be cautious in giving in Exceptions containing Crimes against Witnesses, for notwithstanding any Protestation they make, an Action will lie against them on Default of proving such Crimes.

§ 21. Therefore the Party Principal should give in such Exceptions; who should be oblig'd to swear that he does not do it with a malicious Mind, or to give Delay.

It was formerly practised to give a special Proxy to some poor low Vagabond to propose such Exceptions against reputable Witnesses; against whom it would not be worth while to commence a Suit; but this Practice is now exploded, nor should it ever be permitted by a Judge.

## C H A P. XI.

*Of Exhibiting Instruments, or Writings.*

SECT. I. **I**Nstruments are either Public<sup>Instruments.</sup> or Private; Publick, when drawn by a Notary Publick under some authentick Seal; and such as are formed at the Acts in Court; Private, such as arise from private Contracts :

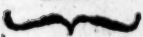
§ 2. If an Instrument is mentioned in the Libel, it should properly be exhibited before Contestation; that the Impugnant may deliberate whether he will allow or contest it :

§ 3. Instruments may be exhibited even to Conclusion in the Cause, un<sup>Exhibited e-</sup>less the Judge appoints a Day for pro<sup>ven to Con-</sup>clulsion. clusion.  
pounding all Things that are Matters of Fact; but Instruments newly found may be produced even after Conclusion.

§ 4. The Proctor shall say, I exhibit<sup>Proctor exhi-</sup> such an Instrument, or Writing, be<sup>biting Instru-</sup>ginning<sup>ments.</sup>



CHAP. ginning in such and such Words; and

XI.  ending in such and such Words (here the Beginning and End of the Writing is to be repeated) to aid and strengthen the Proof of the Matters contained in such a Libel; or such an Allegation given in before by me in this Cause; and I alledge that this Exhibit was, and is subscribed, or sealed by the Hand, or Seal of the Persons named in it; and delivered as their Act: And I alledge that the Contents are true; and that all Things were had and done as contained in it; and this Allegation I propound jointly and severally, and pray that it be admitted, and that Justice be administered to me and my Party; which the Judge shall admit as far as by Law:

Answer to  
Exhibits.

§ 5. And then the Proctor may swear, that he believes the Contents of that Writing to be true; and pray that the adverse Proctor be sworn to answer faithfully concerning it, either that very Day; or the Court Day after at the Discretion of the Judge

§ 6. Or he may pray the Answer of the Party principal as he thinks it may make most for him:

But

But where the Instruments are publick under authentick Seals; the Proctor's Answer seems to be of most service; because they are better acquainted with such Matters :

CHAP.

XI.

And to obtain these Answers you proceed as in obtaining personal Answers as before \*.

§ 7. Either Party having old Papers, Old Papers or Books to produce may exhibit them or Books exhibited. as other Writings, and alledge that they were faithfully kept by such a Person; either publick Officer, or publick Person; and that full Credit was, and should be given to them, as well in Court, as out of Court:

§ 8. But if they are so large and prolix, that they cannot be registered without great Expence; the Proctor may have a true Copy of that Part of them written out, which makes for his Intention:

§ 9. And upon his exhibiting them, may add that he exhibits especially such a Clause; or such Words in such a Page

\* See Chap. vii.

CHAP. a Page of the Book ; together with a

XI. true Copy of them ; and prays that a

Comparison be made between such Copy of such Words, and such Words in the Original :

§ 10. And that (such Comparison being made, and registered) the Original be re-delivered, and that as much Faith and Credit be given to the Copy so compared, and registered, as to the Original: Which the Judge shall decree.

And the Party shall leave such Original with the Register ; until the adverse Party give their Answer ; that it may be inspected into, and considered by them.

§ 11. The Register shall be paid only for registering that Clause ; and no Exhibits mentioned in the Acts are to be re-delivered to the Party exhibiting them ; unless they be first registered *ad perpetuam Rei Memoriam* : nor even then without the Decree of the Judge.

Exhibiting  
against Ex-  
hibits, or ac-  
cepting them.

§ 12. The Adversary may except against Exhibits, as against Witnesses ; but he should rather accept them as far

## General Proceedings.

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as they make for his Party; and dissent **CHAP.**  
to them in every other Respect: **XI.**

§ 13. For they may be of Advantage to him, and if they prove so, the Adversary may subduct them; unless they are accepted: The Answers of Proctors to Allegations on Exhibits are generally in Writing.

§ 14. If there are any Instruments or Writings necessary to the Cause in the Registry or publick Archives of any Ecclesiastical Judge; the Cause depending in a superior Court:

§ 15. The Proctor alledging the Matter, may pray that a Commission for a Scrutiny be granted to such and such Persons, jointly and severally, to examine the Registry; and Archives of such a Bishop, or Archdeacon, for such and such Instruments, Records and Writings: Commission for a Scrutiny.

§ 16. And the opposite Proctor is to be admonished to attend such Scrutiny if he thinks it concerns him; and a Monition to be decreed against such Bishop, or others having such Instruments, to exhibit them before the said Commissioners



CHAP. Commissioners on a Day certain ; and  
 XI. in a Place to be assigned ; all which  
 the Judge shall decree.

§ 17. And the Place to be assigned in the Commission should be the Registry Office ; or the Place where the Writings are ; and the Commission should direct the Commissioners (if they find any Writings necessary to the Cause) to have Copies of them drawn, and to see that they be compared carefully with the Originals :

§ 18. They are to proceed here as upon Commissions for examining Witnesses ; and every Thing is to be done (if the opposite Proctor appears not ; nor any Substitute for him) in Pain of his Contumacy :

§ 19. And if the Bishop, or his Register does not appear (although admonished) to exhibit the Records ; it is doubted whether the Commissioners can excommunicate them, unless they have such a Power granted to them and specified in their Commission :

§ 20. But

§ 20. But upon an authentick Certificate from the Commissioners of the Bishop's and Register's not appearing in Conformity to the Monition; the Judge who granted the Commission may proceed against them in a Cause of Contempt.

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## C H A P. XII.

*Of Oaths, and Costs of Process retarded.*

SECT. I. **T**HERE are many Oaths respecting different Matters to be taken before, and that are to be administered by an Ecclesiastical Judge :

And first, the Oath of Calumny is to be taken (if required) by the Party Agent, his Proctor, and Advocate in any Time of the Suit ; and if they refuse to take it ; the Cause, by a Canon in Force in this Kingdom, is to be dismissed with Costs \*.

Oath of  
Calumny.

§ 2. And the Oath consists of these Particulars : First, that he believes he supports a good Cause ; secondly, that when asked, he will not deny what he believes to be true ; thirdly, that he will not knowingly make Use of a false Proof ; fourthly, that he will not seek Delay

\* Can. 80. Car. I.

## General Proceedings.

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Delay through Fraud to protract the CHAP.  
Suit; and fifthly, that he hath given XII.  
or promised nothing; and will give or  
promise nothing for obtaining Victory;  
but to those the Laws and Canons per-  
mit.

§ 3. And this Oath is to be taken but once in the Cause; but the Oath of Malice (that is, swearing when any Thing is done, or propounded; that it is not done or propounded with a malicious Design to cause Delay) may be administered at any Time as often as the Judge thinks proper; notwithstanding the former Oath was taken.

§ 4. Upon the principal Party's appearing, and alledging that he has proved his Intention half fully; or more than half fully; and praying that the suppletory Oath be administered to him:

§ 5. If the adverse Party denies the Allegation, the Judge may assign a Day to hear his Will; and to be informed; on which Day if the Allegation appears true, the Judge shall administer the Oath in Cases which the Law admits.

G

§ 6. Then



## CHAP.

## XII.

To be re-  
quired be-  
fore Con-  
clusion.

§ 6. Then the Party shall swear from his own certain Knowledge to the Truth of the Fact :

And this Oath is to be required before Conclusion in the Cause ; although the Judge may defer administering it until after Conclusion.

§ 7. But if it is not required before Conclusion ; it cannot be administered at all :

The adverse Party may prevent it's being administered by proving the Party prying it of no Reputation, and infamous :

§ 8. The Proof must be Half full beyond Contradiction, and not weakened by opposite Proof ; such as of a single Witness beyond Exception, before this Oath be administered :\*

It should be given in the Presence of the opposite Party, or at least he should be cited to attend ; and not in arduous and criminal Causes.

\* See Maran. Spec. Aur. p. 418.

§ 9. If

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§ 9. If either Party proposes any CHAP. incidental Matter to support or defend his Cause; as Allegations or Exceptions: And then fails in the Confirmation, and Justification of it, if it be Matter of Law; or the Proof of it, if it be Matter of Fact: XII.

§ 10. In such Case the adverse Party may pray that he be condemned in Costs of Process retarded: Costs of Process retarded.

Then giving a Schedule of Costs made and expended on that Occasion, and swearing first that such Costs were necessarily expended, or to be expended by him; the Judge shall tax the Bill, and decree a Monition against the Party to pay such Costs within such a Time:

Or he may from proper Reasons reserve the Taxation to the End of the Suit.

## C H A P. XIII.

*Of the Terms to propound all Things in Plenary, and to bear Sentence from the first Assignment in Summary Causes.*

SECT. I. **I**F the Impugnant seeks Delays and proposes his Exceptions at one Time, and his Matter of Defence at another :

Competent  
Term to propound all  
Things.

The Proctor for the Promovent as soon as the Impugnant shall give one Matter, and afterwards (the probatory Term lapsed, or even depending) shall give another ; shall alledge that he does so to give Delay, and to protract the Suit ; and pray that a competent Term be assigned him to propound all Things, which the Judge is wont to assign him.

§ 2. And if on that Day he does not make his whole Defence ; he cannot afterwards propound any Thing, and pray a probatory Term thereon ; at least so as to produce Witnesses ; unless  
some

some new Matter intervenes from the CHAP.  
 Exceptions of his Adversary ; or some- XIII.  
 thing necessary to his Defence came  
 lately to his Knowledge ; or unless the  
 Cause was under Compromise most of  
 that Term :

§ 3. And the same holds with re-  
 spect to the Promovent : but in matri-  
 monial Causes this cannot be done ; be-  
 cause they are privileged, and favour-  
 able Causes ;

And by the modern Practice there  
 may be a Term assigned to prove all  
 Things by such a Day certain.

§ 4. After the Witnesses are exa-  
 mined, and Publication of their Depo-  
 sitions made, the Party Promovent may  
 pray, in summary Causes, a Term to hear  
 Sentence from the first Affignation ;  
 and in Plenary, a Term to propound  
 all Things, for which last Term the  
 Judge shall assign next Court Day.

A Term to  
 hear Sen-  
 tence from  
 the first Af-  
 signation.  
 Or to pro-  
 pound all  
 Things.

§ 5. Although Publication of the  
 Depositions of the Promovent's Wit-  
 nesses be not made, nor prayed for ;  
 the Impugnant (the probatory Term  
 being lapsed) may pray the above Terms



CHAP. to be assigned ; which will oblige the  
 XIII. Promonent to pray Publication, lest  
 they conclude in the Cause without it.

§ 6. And Publication being made, either Party, who thinks his Intention best proved, may pray in Summary, a Term to hear Sentence from the first Affignation ; and in Plenary Causes, a Term to propound all Things :

On those  
 Terms, Ex-  
 ceptions, or  
 Defence.

§ 7. On which Terms the Impug-  
 nant may give in any Matter, Excep-  
 tions, or Defence, or add to those al-  
 ready given in by him ; by Admission  
 of which Conclusion is put off :

§ 8. But although additional Positi-  
 ons be admitted ; yet no new Term is  
 to be given to prove them, if any pro-  
 batory Term was given before ; because  
 such Positions should be, and are in  
 themselves deemed only declaratory ;  
 and should be proved within that Term.

§ 9. At this Day the Proctor who  
 has no Mind to conclude, on the Day  
 appointed for the Term to propound  
 all Things, gives his Allegation which  
 he prays may be admitted ; and the op-  
 posite Proctor is to dissent :

§ 10. Then

§ 10. Then the Judge may assign the next Court Day to hear his Pleasure upon admitting it; and (if it be not to be admitted) to conclude in Plenary; or to hear Sentence from the second Assignment in Summary Causes on that Day;

A Copy of the Allegation is to be given to the adverse Party, two or three Days before the Day assigned to hear the Judge's Pleasure.

§ 11. On the Day assigned to propound all Things, or to hear Sentence from the first Assignment, if either Party has Witnesses present, and swears that they are necessary to his Party; the Judge may admit or reject them at Pleasure, and no Appeal lies.

§ 12. On the Term to propound all Things, or the Term to hear Sentence from the first Assignment, the Impugnant should give in Exceptions against his Adversary's Witnesses, and make his Defence:

## CHAP.

## XIII.

For if nothing be done on those Days Conclusion is infered: And nothing can be proposed afterwards, but what appears upon Oath to have come lately to the Party's Knowledge.

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C H A P

## C H A P. XIV.

*Of Conclusion and Information.*

SECT. I. **I**NCIDENTAL Matters Incidental Matters.  
 often arise and Allegations Matters.  
 are often given in, that do not immediately concern the principal Cause; as Objections against false Returns of Citations, by which Persons have been excommunicated, and the like.

§ 2. And after Witnesses have been produced on such Allegations, and Publication made; if the Party alledges that he has proved his Intention, and prays that the opposite Party be condemned in Costs of this Proof; and his Party simply, and unconditionally absolved, if it be upon an Excommunication from a false Certificate :

§ 3. And if the Judge shall assign As to them two Assignations infer Conclusion:  
 (in Presence of the adverse Proctor denying the Allegations) the next Court Day to hear his Pleasure; and on that Day (at the Petition of the same Party in Presence of the adverse Proctor)



CHAP. tor) shall assign another for the same

XIV. Purpose: These two Assignations infer

Conclusion as to that incidental Matter; and the Adversary cannot except against the Witnesses, nor propose any Thing contrary to the Allegation.

Term to  
conclude.

§ 4. On the Day assigned to propound all Things in plenary Causes; the Proctor who hopes for Success should say, I exhibit all the Acts enacted, deduced, alledged, propounded, exhibited, proved, and confessed in this Cause, as far as they make for my Party; and I pray a Term to be assigned to conclude the next Court Day.

§ 5. If the adverse Party be not diffident of his Cause, he should say so likewise; but if he is diffident, he should dissent to all this:

This exhibiting all the Acts, and Assignation to conclude infers Conclusion in the Cause:

Or if nothing is done on this Day, Conclusion is inferred.

§ 6. On the Day assigned to conclude, the Proctor at whose Petition it was

## General Proceedings.

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was assigned, or the other Proctor CHAP. shall say (giving the Judge his Title) XIV.

I conclude in this Cause; and pray that you conclude with me, which the Judge shall do:

§ 7. And then either Proctor may Term to hear pray that there be assigned a Term to Sentence. hear Sentence on next Court Day; and also Information on that Day, or in the Interim:

And the Proctor dissident of his Cause should dissent; and this excludes Proof by Instruments, or Writings, unless found since Conclusion.

§ 8. In Summary Causes, on the Day assigned to hear Sentence from the first Assignment, the Proctor should pray that the next Court Day be assigned to hear Sentence from the second Assignment; and pray a Day to be assigned for Information before that Day, or that Information be given on that Day.

§ 9. If no Matter, or Defence be propounded or alledged on that Day, the Day assigned to hear Sentence from the first Assignment, Conclusion follows.  
In

## CHAP.

## XIV.

In the Prerogative there are always three Assignations, and each Assignation made ever with this Limitation, unless Cause be shewn, &c.

## Information.

§ 10. Upon the Day appointed for Information, which may be any Day, although not a Court Day; or in the Judge's, or Advocate's Chamber upon proper Reasons: The Advocates on both Sides shall inform the Judge of the Merits of the Cause, the Strength of the Proof, and the Matters of Fact, as well as Matters of Law that appear:

And if the Judge be not satisfied in the Matter that Day; he may assign another, and another Day, until he is fully satisfied.

## C H A P. XV.

*Of Sentence.*

SECT. I. **I**nterlocutory Decrees have sometimes the Force of <sup>Interlocutory</sup> Decrees. definitive Sentences; because no other Sentence can be expected after them in the Cause: And Information is given to the Judge upon the incidental Matter, before he pronounces his Interlocutory Decree:

§ 2. After Conclusion in the Cause, <sup>Sentence</sup> and after Information is given; on the <sup>pronounced</sup> Day appointed to hear Sentence (the Party expecting it in his Favour, having first had the Principal Party or his Proctor admonished to attend on that Day) the Judge shall pronounce it (they being thrice called, and declared contumacious) in Pain of their Contumacy; or if they appear, in their Presence.

§ 3. But by the modern Practice it is not necessary at all to have them admonished to attend on that Day; for the Party, or his Proctor is obliged to attend until Sentence be given; or if the Proctor is obliged to be absent, he should



CHAP. should substitute another in his  
XV. Place:

Sentence up-  
on the Death  
of the Party.

§ 4. If your Adversary dies after Contestation, Care should be taken not to condemn him, but to condemn his Party; and the Time for appealing lapsing, which is fifteen Days by the Statute; his Executors, or Administrators should be called to shew Cause, why Sentence should not be demanded to Execution.

§ 5. The Proctor hoping Sentence for his Party should have it written out and present it to the Judge:

And Advocates employed correct and amend such Sentences, and subscribe them.

§ 6. If the Judge will pronounce it, he shall read on, until he comes to the Place where the Adversary is mentioned, and is praying-----where shall be a Blank: And the Judge shall ask him what he prays, and he shall say Justice; which Word the Judge shall insert with his own Hand; so that if there be any Dispute which Sentence was pronounced, the Judge seeing his own Writing may easily determine it.

§ 7 And

§ 7. And upon Sentence being pronounced, the Register should take down the Names of those present at it :

Appealing  
or protesting  
to appeal.

The Adversary should dissent, and if he does not immediately appeal at the Acts; should protest to appeal within the Time indulged by Law.

§ 8. Although the Party grieved by any Nullity in the Proceedings may appeal to a Superior Judge; yet he may alledge such Nullity (when cited to shew Cause why Sentence should not be executed) before the same Judge :

And that Nullity appearing (as if in Plenary Causes there was no Contestation) the Judge should revoke it.

§ 9. Although there is no Appeal from a superior to an inferior Judge; yet if in any Cause depending before an inferior Judge any Sentence pronounced, or Act done by a Superior be objected to destroy your Intention; or to confirm the Intention of your Adversary.

You

## CHAP.

## XV.

You may object against it's Nullity ;  
 and if you prove it ; the inferior Judge  
 should pronounce, as if no such Sen-  
 tence or Act had been exhibited.

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C H A P.

## C H A P. XVI.

*Of executing Sentences, and of  
Costs of Suit.*

SECT. I. **I**F there be no Appeal within fifteen Days after Sentence ; or if there is, and the Judge from whom be not inhibited within the Terms assigned to prosecute it, and to certify the Prosecution.

§ 2. In this Case the Proctor obtaining Sentence shall exhibit a new Proxy for his Party ; and pray that the Party against whom Sentence was given be cited to shew Cause, why that Sentence should not be executed ; and the Costs of Suit taxed against him : Sentence executed,

And if he appears upon that, the Proctor should move that Sentence be executed, and the Costs taxed.

§ 3. But if there be an Appeal, the Appellant under a Protestation of his not consenting to the Judge should (af-

H

ter



CHAP. ter having exhibited his Proxy for his  
 XVI. Party) protest against this Motion ; be-  
 cause his Party has appealed, and the  
 Time is not lapsed for prosecuting it :

§ 4. Then the Adversary may pray the Judge, that Terms be assigned to prosecute the Appeal, and to certify the Prosecution : And these being expired, if the Judge be not inhibited ; he shall order the Sentence to be executed in Presence of the Proctor for the Appellant.

§ 5. But if he appealed within the legal Time, and obtained an Inhibition within the Time allowed for prosecuting, although he did not certify the Judge on the Day appointed to prosecute and certify, or before it : And although the Sentence was ordered to Execution ; yet notwithstanding all this he may prosecute the Appeal :

§ 6. If the Proctor who obtained Sentence believes that the Proctor against whom he obtained it, did not appeal within the legal Time ; he may have a Day assigned him to prove it, which is done by exhibiting the publick Instrument of Appeal.

§ 7. The

§ 7. The modern Practice is, that, at the Time Sentence is pronounced, the Party defeated be condemned in Costs, and the same taxed; and the Condemnation and Taxation is frequently in the same Sentence: Condemnation and Taxation in same Sentence.

§ 8. Or the Judge may reserve the Taxation until the next Court Day; on which Day (the Party being present, or having been monished to attend, or cited to see the Costs taxed, and not appearing) the Adversary should pray that the Costs be taxed in Penalty of his Contumacy, so that this is Part of the Execution of the Sentence: Taxation of Costs.

§ 9. And after the Time for appealing lapses, if there be no Appeal; the Adversary should pray a Monition against the Party condemned, to pay the Matter he is condemned in, with the Costs within such a certain Time; under Penalty of Excommunication from that Time (the Term assigned for Payment lapsed and Payment not being made) pronounced upon him. Monition.

§ 10. There must be a Liquidation of Things adjudged by the Sentence to Liquidation of Things adjudged in Sentence.

CHAP. be substracted ; as of specifick Lega-  
 XVI. cies, or Tythes, the Value of which  
 must be proved, before the Execution  
 of Sentence be demanded ; if it was not  
 proved by Witnesses upon the Libel :

§ 11. And the Impugnant is to be  
 cited to see this, and if he does not ap-  
 pear, but Liquidation is made in Pain  
 of his Contumacy : He should be cited  
 to shew Cause, why Sentence according  
 to this Liquidation should not be exe-  
 cuted upon him ; because if it be in  
 Excess, he may appeal :

§ 12. And if he appears, he may  
 except against the Witnesses to prove  
 the Value, and may use what Defence  
 he pleases as before Conclusion in the  
 Cause :

But if the Value was alledged in the  
 Libel, and he the Promovent brought  
 Witnesses to prove it ; after Publication  
 he cannot produce new Witnesses to  
 the same.

§ 13. Costs of Suit being taxed, and  
 the Party or his Proctor swearing first  
 before they are taxed, to the Sums ex-  
 pended, or to be expended on the Cause ;  
 (and

Oath upon  
 Taxation of  
 Costs.

## General Proceedings.

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(and such Oath is always to be made upon the Proctor's offering a Bill of Costs to be taxed) he may pray a Monition against the Party condemned, to pay them within a fixed Time, under Penalty of Excommunication pronounced in the Monition upon him in Default of paying them within that Time: CHAP. XVI.

§ 14. And upon the Return of the Monition he is to be denounced (if he did not pay) and proceeded against as excommunicated:

And if he lies concealed, there may be a Monition *Viis et Modis* against him; or if the former Monition was lost, or not served, another may be taken out:

If the Person cast had a just Cause of Suit, he is not to be condemned in Costs.

*End of the General Proceedings.*



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## C H A P. XVII.

### *Of Criminal Causes.*

Plenary and  
summary  
Causes.

SECT. I. **A**LL criminal Causes are Causes of Correction; and in these the Judge may proceed from his meer Office, and then it becomes a summary Cause; or from his Office promoted, and then it is a Plenary:

Any one may promote the Office against a spiritual Offender, as it is a Matter of common Concern; or the Minister and Church-Wardens of the Parish may present him.

§ 2. But by a Statute in Force in this Kingdom,\* no Citation shall issue from the meer Office, or Office promoted of any Ecclesiastical Court on Account of any Crime or Immorality punishable there; unless the Promoter in a Case of voluntary Promotion be himself examined; or some Witness voluntarily

\* 6. Geo. I. c. 6.

## Criminal Causes.

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voluntarily offering himself to be produced by him :

CHAP.

XVII.

§ 3. And he shall be personally examined on Oath by the Judge of that Court concerning the Grounds of issuing such Citation ; and all Ecclesiastical Judges shall cause such Examination to be reduced into Writing, and subscribed by the Examinant ; and attest the same, and then lodge it in the Registry of their Court.

Examination on the Grounds of issuing Citation in Causes of Office.

§ 4. And if it does not appear from such Examination that the Crime was committed within two Years immediately before, no Citation shall issue ; and after Publication such Examination shall be annexed to the Depositions taken in the Cause ; and if the voluntary Promoter has failed in proving the Crime ; he shall be condemned in double Costs.

§ 5. And there must be such a Witness before any Judge can issue Citation from his meer Office ; or before he receive any Presentment from those enabled to present by Law ; and the Person cited upon such Presentment, (if the Allegations charged against him

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are

## Criminal Causes.

CHAP. are not sufficiently proved, or he shall  
 XVII. otherwise purge himself according to  
 Law from such Charge) shall be dismissed without any Fees.

But there is a Provision in this Act, that Ordinaries shall not be hindered from proceeding against Ecclesiastical Persons at Visitation, or otherwise.

Articles against Offender.

§ 6. In Causes of meer Office, if there be no Proctor for the Office settled in the Court, the Judge shall appoint one of the Proctors as necessary Promoter in such a Cause; who upon the Offender's appearing shall give in Articles against him, pray that they be admitted; and that the Offender be sworn to answer them the next Court Day.

Answer to Articles.

§ 7. The Impugnant should protest against answering any criminous Position; and if he does answer such, that it be accounted, and deemed null and void.

§ 8. Although he is not obliged to answer any criminous Position, yet he must answer such as alledges the Cause to appertain to the Ecclesiastical Jurisdiction;

diction; and the Impugnant to be CHAP. XVII.  
 within the Jurisdiction of the Court; that the Competency of the Court may appear; and also it is held that he must answer such Position as contains the Fame and Report of the Crime.

§ 9. And if he refuses to swear to answer such Articles, he for such Contumacy is to be excommunicated:

But if when Sworn he will not answer, he is to be declared for having confessed the Articles he was to answer.

§ 10. In Cases of voluntary Promotion the Voluntary Promoter himself should give in Articles, as it is held by some, and indeed with Reason; for he is in Law the first and the Original Proctor, and no Proctor can substitute another, till after Contestation; for he does not until then become Master of the Suit:

Voluntary Promoter to give in Articles.

So that the Promoter should himself first give in Articles; and after an Answer is given to them, he is *Dominus Litis*, and may constitute a Proctor:

§ 11. If



## CHAP.

## XVII.

§ 11. If the Impugnant denies the Articles, and will not confess; you are to pray a probatory Term, produce Witnesses, and to proceed in General, as in other Causes.

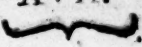
§ 12. When the Fame of any Crime imputed to the Impugnant had been proved; canonical Purgation thereupon was usually enjoined him; and the Manner of that is as follows:

Canonical  
Purgation.

§ 13. When the Fame was proved, and upon violent Presumptions appearing against the Criminal; he was to be enjoined to produce on a certain Day a certain Number of Compurgators, honest Fellow-Parishioners, to purge himself from that Charge laid against him:

§ 14. And a publick Edict issued out, to be denounced in the Parish Church of the Criminal a convenient Time before the Day on which he was to appear for his Purgation; by which all Persons, who could oppose any Thing against the Criminal or his Compurgators, were cited to appear on that Day; and to make their Objections against them:

And

And a Return of this Edict when **CHAP.**  
pronounced was to be made by the **XVII.**  
Person denouncing it, upon Oath, or   
by a proper and authentick Certificate.

§ 15. On the Day the Criminal was to appear (the Parishioners so cited appearing; or they being thrice called, and not appearing being pronounced contumacious) he is, in Penalty of their Contumacy, to be sworn concerning his Innocence; and his Compurgators (if nothing is objected against them) to be produced and sworn to their Belief of his Innocence, and whether they believe he swore the Truth:

And his Innocence appearing, he was to be absolved, or otherwise, to be condemned, and enjoined Penance.

§ 16. But this Practice, as well as This Practice inequitable. that of obliging the Criminal, after the Fame of the Crime is proved, to swear whether the Crime was committed by him; and so to condemn himself; seems in many Respects highly inequitable and against Law:

§ 17. For

## CHAP.

## XVII.

§ 17. For it would be very hard that Persons, perhaps traduced and calumniated, should be obliged to purge themselves from such Calumny; and so by putting themselves to Expence and Trouble satisfy in a greater Degree the Malice of their Defamers.

§ 18. Promoters failing in Proof were before liable to an Action of Defamation, and are now to be condemned in double Costs:

Ministers and Church-wardens are not at all liable to be sued for presenting; and Ministers, or in their Absence their Curates may join with Church-wardens in their Presentments; or may present themselves upon Neglect of the Church-wardens. \*

§ 19. No Church-warden shall be troubled for not presenting oftener than twice a Year, or once in any Diocese where Presentments have not been made oftener; (for they are not bound to do more) unless upon manifest Proof it appears, that they have wittingly and willingly omitted to present some

\* See Can. 64, 65. Car. I.

## Criminal Causes.

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publick Crime they knew of: In which CHAP.  
Case they may be proceeded against in XVII.  
a Cause of willful Perjury: But they  
may be called to explain their former  
Presentments. \*

§ 20. Articles are to be given to  
Church-wardens at Visitations, to give  
them Time, and to instruct them in  
framing their Presentments.†

\* See Can. 66. and 67. Car. I.

† Can. 68. Car. I.

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CHAP.



## C H A P. XVIII.

*Of Causes of Contempt.*

Contempt.

SECT. 1. **I**F a Person served with a Citation shall tear it, and use reproachful Words against the Ecclesiastical Judge and his Jurisdiction; or beat the Mandatary who served it:

Upon an Allegation of these Facts made to the Judge, and that they were committed in Contempt of Ecclesiastical Jurisdiction; or rather upon an Affidvit of them; the Judge shall decree Citation against him.

§ 2. If a Person (depending a matrimonial Cause) inhibited to marry, shall afterwards (notwithstanding such Inhibition) solemnize Matrimony; he may in the same Manner be cited to answer Articles concerning the Contempt of Ecclesiastical Jurisdiction.

§ 3. So may also Commissioners taking upon them a Commission to examine

## Criminal Causes.

III

amine Witnesses; and not returning  
the Commission at the Time appointed  
them :

CHAP.

XVIII.

§ 4. But the Proctor obtaining the Commission, and making the Allegation that the Commissioners neglect, and do not care to return the Commission; should pray that his probatory Terms be continued :

§ 5. If the Judge proceeds from his meer Office, the Proctor of Office (as his necessary Promoter) upon the Appearance of the Party should give in Articles containing the Matter of his Contempt; and pray that they be admitted;

Articles  
containing  
the Con-  
tempt.

§ 6. And then he should produce the Party Principal present in Court upon them; who shall be sworn to answer them the next Court Day, and to appear then to exhibit and recognize his Answer :

Answer of  
Party Prin-  
cipal.

And he should dissent, and protest against answering any Position which he is not obliged to answer by Law.

§ 7. No

CHAP.  
XVIII.

§ 7. No Proctor or Advocate is allowed to appear for him without Leave from the Court; nor is it usual to grant him a Copy of the Articles exhibited against him before he be first examined upon them; but this seems to be against Law.

§ 8. Where the Office is promoted, the Promoter himself should properly give in Articles; and upon the Answer to them constitute his Proctor, as before in criminal Causes.\*

**Sentence.**

§ 9. If the Contempt is confessed, the Judge may immediately pronounce Sentence; or assign a Term to hear Sentence from the first Affignation, as in Summary Causes; for Causes of Contempt are held such:

§ 10. If the Contempt be denied, a probatory Term is to be prayed, and you must proceed as in other Summary Causes; nor is there that full Proof necessary which other Causes require; for these are deemed favourable Causes.

\* Chap. xvii. Sect. 10.

*The End of Criminal Causes.*

CHAP.

## C H A P. XIX. •

*Of Double Quarrels.*

SECT. 1. **I**F a Clerk be presented to a Living, and shall shew such Presentation (in Order to be instituted) to the Bishop within whose Diocese the Living is, or to his Vicar General;

And if Institution be refused him, he may have a double Quarrel against such Bishop: Which is a Rescript from the Arch-Bishop directing the Bishop within a certain Time to institute such Clerk. Double Quarrel.

§ 2. And by a Canon in this Kingdom no double Quarrel shall be granted at the Suit of any Clerk presented to a Benefice; unless he personally swears that two Months at least are expired, since he tendered his Presentation to the Bishop; and that he refused him Institution thereupon; under Pain of Suspension of the Grantor for half a Year;

I                      and



CHAP. and Nullity of the same double Quarrel\*.  
XIX.

Monition.

§ 3. The double Quarrel should contain, first a Monition to the Bishop, or his Vicar General to institute the Clerk presented within nine Days; or within Fifteen from the Time the double Quarrel is served upon him.

Citation.

§ 4. Secondly a Citation (those Days being lapsed, and the Clerk not instituted) directing him to appear Personally or by his Proctor; and to shew Cause why the Right of instituting such Clerk, and of ordering him to be inducted, should not (on Account of such Neglect) devolve to the Judge granting the double Quarrel:

Inhibition.

§ 5. And thirdly, an Inhibition, that (pending the double Quarrel) he should do nothing to the Prejudice of the Party complaining under Penalty of the Law:

§ 6. And if the Bishop admits another Clerk in the Interim, his Contempt is the greater; and that Admission is to be revoked, and declared null and

\* Can. 57. Car. I.

## Beneficial Causes.

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and void ; and he may be proceeded a-  
gainst by the Arch-Bishop for Con-  
tempt.

CHAP.

XIX.

§ 7. A Mandatary with due Reverence usually admonishes the Bishop to institute the Person presented within the Term ; and inhibits him according to the Form mentioned in the Double Quarrel.

§ 8. The Clerk presented should with proper Respect apply to the Bishop for Institution, on the Third Day after the Bishop is monished and inhibited, if nine Days are assigned him to institute ; or on the fifth, if Fifteen are assigned :

§ 9. And he should declare that he is ready to subscribe the Articles of Religion, and to take all the Oaths required by Law :

And if he is not instituted, he is to apply every third, or fifth Day in the same Manner, if he can attain to the Presence of the Bishop, and if not, he is to protest concerning it, and to have Witnesses, or a Notary Publick to attest the same :

I 2

§ 10. But

## CHAP.

## XIX.

§ 10. But if the Bishop will not institute within the Term; he is to be cited according to the Tenor of the double Quarrel;

Or if he peremptorily and expressly refuses (after he has been monished) to institute; the Clerk presented may have the Bishop cited before the Term for instituting lapses: Because he refuses by that Means to accept the Term.

Citation by  
Ways and  
Means.

§ 11. If the Bishop does not appear, and the Mandatary cannot come at his Presence by applying to his Servants; a Citation by Ways and Means shall go against him as in other Causes:

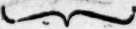
§ 12. The Mandatary should appear personally; or should send an authentick Certificate to the Complainant, or his Proctor, certifying the Time of his monishing the Bishop to institute; his inhibiting and his citing him; the Days on which the Clerk presented prayed to be instituted, and the Refusal of the Bishop, if he did refuse;

Return of  
Mandates.

§ 13. On the Day the Bishop should appear, the Proctor for the Querelant should exhibit his Proxy; and make himself

## Beneficial Causes.

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himself a Party for him: And then CHAP.  
exhibit the Original Mandate with the XIX.  
Certificate on the Back of it: 

§ 14. Then he should accuse the Decree.  
Contumacy of the Bishop in not appearing (he being thrice called) and should pray that he be pronounced contumacious; and in Pain of such Contumacy that it be decreed according to the Tenor of the Mandate; that the Right of instituting is devolved to that Court on Account of the Bishop's Neglect in not instituting:

§ 15. Then the Judge (the Bishop being thrice called) shall pronounce accordingly; and shall decree that the Archdeacon, or his Official, be written to for the Induction of that Clerk:

§ 16. And the Judge in such Cases sends the Clerk to the Arch-Bishop to be examined; who (if he finds him fit) writes back to the Judge for his Admission:

Then he (first giving Caution according to Custom to indemnify his Constituent; and taking all the Oaths to be taken, and subscribing all Things to be subscribed,) shall receive Letters of Institution: Clerk instituted.



CHAP.stitution : And a Mandate to the Arch-  
 XIX. deacon for his Induction ; who shall  
 { induct himself, or cause his Official to  
 do it.

Reasons al-  
 ledged for  
 not institut-  
 ing.

§ 17. If the Bishop appears, and al-  
 ledges Reasons why he did not institute  
 the Clerk presented ; they are to pro-  
 ceed as in other Summary Causes :

§ 18. And if the Bishop fails in  
 Proof he is to be condemned in Costs ;  
 and the Jurisdiction of the Judge is to  
 be pronounced for :

But if he proves his Allegations, and  
 that he had sufficient Reasons for not  
 instituting ; Sentence is to be pronounc-  
 ed for him, and the Complainant con-  
 demned in Costs.

Intervention  
 of another  
 Clerk pre-  
 sented.

§ 19. If another Clerk possesses the  
 controverted Benefice, or is presented  
 to it : If the Bishop does not care to  
 litigate the Matter, he may appear,  
 and make his Allegations to prevent  
 the Institution of that other Clerk sue-  
 ing the double Quarrel :

§ 20. But if he does it in his own  
 Name, the Judge of the Quarrel will  
 pronounce for his own Jurisdiction in  
 Default

Default of the Bishop's appearing ; or CHAP.  
the Bishop may give him a proper Au- XIX.  
thority to fee a Proctor to defend the  
Cause in his Name :

§ 21. But it is no Excuse, or Defence for the Bishop to alledge that another was presented to the same Benefice as well as the Complainant ; for he might enquire into the Right of Patronage, and he becomes negligent if he does not ; and in this Case the Right of instituting devolves to the Judge of the Quarrel.

§ 22. And although both Clerks insist upon their being instituted, yet the Judge should institute neither, until he enquires into the Right of Patronage :

But if the first Clerk complaining be found unfit through Defects not objected by the Bishop ; the Judge of the Quarrel may admit the second upon his exhibiting his Letters of Presentation to him : For the Bishop has lost thro' his Neglect the Right of instituting.

## C H A P. XX.

*Of Enquiries into the Right of Patronage.*

Patrons.

SECT. 1. **P**ATRONS are such as have the free Donation of Benefices in themselves, founded on their or their Ancestor's building Churches; and endowing them with the Consent of the Bishop; and upon that Account obtaining a Right to present a fit Clerk to him for such Churches:

*Quare Impedit.*

§ 2. If two Patrons, both pretending to the same Church, present their Clerks respectively to the Bishop; and both insist upon being admitted: And if the Bishop admits one to the Detriment of the other; he or his Patron may have an Action at common Law against the Bishop by *Quare Impedit*, or the like:

§ 3. But

§ 3. But in this Case the Bishop <sup>XX.</sup>  
 should decree a Process *de jure Patronatus*; that is, a Day certain should be appointed by him to sit in the vacant Church; and a Monition decreed against the Patrons presenting, and the Clerks presented, to be present then, and there, to see the Proceedings therein according to Law: <sup>*Jure Patronatus.*</sup> <sup>Monition.</sup>

§ 4. And a Citation is to go against six of the Clergy, and six of the Laity, all neighbouring to the said Church, to appear then, and there, by Way of Inquest; and to be sworn to enquire concerning certain Articles to be administered to them, touching the Right of Presentation to the said Church: <sup>Citation.</sup>

§ 5. And a publick Edict is to be affixed on the Church-door against all that are any Ways concerned in that Matter to appear also, and to shew in what Respect they are interested, or concerned; and as this is an Inquest of Office it does not bind the Right and Title of the Parties: <sup>Publick Edict.</sup>

§ 6. The Articles to be administered are first, Whether the Benefice be vacant? <sup>Articles administered.</sup>



CHAP. vacant? How long it has been so?

XX. Whether it became vacant by the Death,  
 or Resignation, of the last Incumbent?  
 Or by what other Manner?

§ 7. *Secondly*, Who presented last to said Benefice? and who presented the two or three last Times it was void?

§ 8. *Thirdly*, Whether he, or those who presented last, or the two or three last Times of the Vacancy, presented in another's, or in his or their own Right?

§ 9. *Fourthly*, Whether any of the Clerks presented be known to be guilty, or suspected of any notorious Crime, as of Heresy, or Simony, Perjury, Adultery, or Drunkenness?

§ 10. *Fifthly*, Whether either of the Clerks presented, either promised, or gave of himself, or by any other Person, any Gratuity; or whether any Gratuity with his Consent, or Knowledge, was given directly, or indirectly, to the Patron presenting him, or to any one else procuring him to be presented by the Patron?

§ 11. The

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CHAP.

XX.

§ 11. The former Mandates being duly executed; and the Mandatary either personally swearing to the Service, or sending a proper and authentick Certificate of the Execution of them; then the Persons cited in Particular and cited in General are to be called:

Service of  
Mandates.

§ 12. And if the Persons cited do appear, Proceedings must be carried on in their Presence; if they do not appear (after they have been pronounced contumacious) in Pain of their Contumacy, according to the Tenor of the Mandates;

§ 13. And the Clergymen and Laymen are to be sworn to enquire concerning the Articles administered, and delivered to them; and to return their Verdict the same Day; or within two or three Days according to the Doubtfulness of the Matter:

§ 14. And the Clerk of the Patron they find for, is to be admitted; unless there be some legal Impediments against him; such as are contained in the fourth and fifth Articles.

Clerk of the  
Patron  
found for  
to be admitted.

§ 15. If

## Beneficial Causes.

CHAP. § 15. If the Bishop or his Official  
 XX. do not appear, they may appoint Commissioners to appear in the vacant Church for them; and to carry on the Proceedings *de Jure Patronatus*:

And the Patrons should employ Advocates or Lawyers to defend their Cause and attend there.

Two Patrons presenting the same Clerk.

§ 16. If two Patrons, claiming a Right, present the same Clerk to the same Benefice they claim the Presentation to; the Bishop is not to admit him generally, but particularly at the Presentation of either:

§ 17. And if they make such several Presentations, claiming by several Titles; the Bishop is to direct his Writ *de Jure Patronatus*, but that only at the Request of the Parties: But it is a Doubt whether it shall be sued at the Charge of the Bishop or the Parties; and it is supposed that it should be at the Charge of one of the Parties, or of both of them if they join.\*

*Jure Patronatus* with Premonitions.

§ 18. If a Person be deprived by the Ordinary in Cases that he should give Notice to the Patron; and he does

\* Godol. Rep. Can.

not know the Patron; he should a-CHAP.  
ward a *Jure Patronatus* with solemn XX.  
Premonitions *quorum* Interest; and  
give Notice to him who is found by the  
Inquest to be Patron :

§ 19. And if he does not present  
within six Months after he is served  
with Notice, the Bishop may collate :

And although that shall not bind  
the very Patron; yet upon the special  
Matter shewed, it shall excuse the Bi-  
shop from Disturbance.

§ 20. If Suit be between two Par-Bishop col-  
ties concerning the Right of Presenta-  
tion, and it be not determined within  
fix Months; the Bishop may collate by  
lapse: But the rightful Patron shall re-  
cover Damages.

§ 21. After a Verdict in a *Jure Pa-  
tronatus* is found, the Patron found for  
should renew his Request to the Bishop  
for the Institution of his Clerk; other-  
wise lapse will ensue.



## C H A P. XXI.

*Of Dilapidations.*

Dilapidations.

SECT. I. **D**ilapidations are when the Incumbents suffer their Chancels, or other Ecclesiastical Edifices to decay; or their wasting their Glebe-Woods, and other Ecclesiastical Inheritances: This extends also to Bishops, and is a just Cause of Deprivation in all.

Sequestration for Repairs.

§ 2. Bishops wasting their Woods, and Vicars cutting down Trees on their Glebes, or Church-yards, may be prohibited: And Incumbents suffering their Chancels, or Mansion-Houses to run to Ruin may be accused, and convicted thereof before the Ordinary, and have the Fruits of their Benefices sequestered for the Repairs of them:

Successors may sue last Incumbents for Dilapidations not happening in their Time.

§ 3. Where Dilapidations have been committed, their Successors may sue the last Incumbents, their Executors, or Administrators for them; although they

they did not happen in their Time: CHAP.  
Because they had an equal Action a- XXI.  
gainst the former Incumbents, their Ex-  
ecutors, and Administrators, and might  
recover from them :

§ 4. But if it be alledged, by the Parties sued, that the Dilapidation did not happen in their Time ; and that they expended a just Proportion out of their Income to repair the same ; and that their immediate Predecessors died so much in Debt, that they left no Assets for the Repairs :

Or that they sued the former Incumbent ; and that he died pending the Suit ; and was so much in Debt that no one administered to him :

Or that they sued his Executors or Administrators, and that they were absolved by Sentence on Account of their fully administering :

Or that they obtained Sentence against them, and prosecuted them to Imprisonment, in which they died ; they shall (if they prove their Allegations) be freed and dismissed in such Cases.

§ 5. When Bishops or Incumbents <sup>Computing</sup>  
come first into their Livings, they should <sup>the Sum for</sup>  
inspect <sup>Repairs,</sup>

CHAP. inspect into the Edifices; and should

XXI. take Carpenters, and other proper Artists with them, who shall inspect, and compute the Sum for which the Ruins and Decays could be repaired:

§ 6. And their Calculation should be written down, and signed by them; that they may remember the same, and swear to the Justness of it, when produced in Court:

And there should be two of the same Trade to each Particular, that there might be two Witnesses to the Fact:

§ 7. If the Impugnant thinks the Sum computed to be too great and excessive; he may alledge it to be so; and he is to be permitted to bring proper Workmen to inspect, and compute the Expence of repairing the Decays.

§ 8. Exceptions may be made to the Witnesses on both Sides, and their Assertions invalidated by producing more skilful Artists.

Living lying  
vacant,  
Computati-  
on of Da-  
mages dur-  
ing the Va-  
cancy.

§ 9. If the Bishoprick or Living lay vacant for some Time; the Promovent shall not recover the whole Sum sufficient for the Repairs of the Damages; but

but there shall be an Allowance made CHAP.  
for the Damages happening to the Edi- XXI.  
fices during such Vacancy :

§ 10. And so shall it be if they have not immediately inspected the Ruins, and computed the Damages; but have waited for some Years after their coming into the Livings: And Workmen are to compute and swear to their Belief of the Damage sustained within that Time; which Sum so computed and sworn to shall be deducted out of the principal Sum:

§ 11. And the Sum so recovered shall be laid out forthwith, and expended on the Amendment and Reparation of the Decays and Damages; and in Default thereof by the Space of six Months after the Recovery, the Livings of the Person recovering shall be sequestered till the Money be so laid out.

Sum recovered to be immediately laid out.

§ 12. And if the Person recovering shall die before the Money recovered be so laid out; his Successor shall and may recover from his Executors or Administrators double that Sum by Action of Debt in the King's Courts; un-

K

less



CHAP. let's his Executors or Administrators do

XXI. voluntarily pay the Sum so recovered  
to the Successor :

§ 13. Which Sum he shall expend in the same Manner aforesaid, under the same Penalties and Forfeitures aforesaid : And all Deeds, Devises, Conveyances, Leases, and Gifts of the personal Estate, or any Part thereof (without full Consideration) belonging to Ecclesiastical Persons made with Intent to Defraud their Successors of the Remedy intended them, shall be void against such Successors\*.

§ 14. Ecclesiastical Persons building on their Demesne or Glebes to have Allowance from their Successors†.

\* See 10. W. III. Seff. 3. c. vi.

† See the 10. W. III. Seff. 3. c. vi. And the 12. Geo. I. c. x.

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C H A P.

## C H A P. XXII.

### *Of Tythes.*

SECT. 1. **T**Ythes were formerly <sup>Tythes tem-</sup> merely Ecclesiastical, <sup>poral Inhe-</sup> but are now made temporal Inheritan- <sup>ritances.</sup> ces; are Assets in the Hands of the Heir; the Wife may be endowed with them; and the Tenant by Courtesy shall enjoy them:

§ 2. By the common Law none were qualified to receive them, but an Ecclesiastical Person, or a mixt Person as the King:

They are not grantable for a longer <sup>Grantable</sup> Term than one Year, but by Deed, <sup>for one</sup> they do not pass by a devise of Lands <sup>Year, (quere</sup> with all Profits and Commodities there- <sup>whether not</sup> unto belonging, but should be parti- <sup>more) with-</sup> cularly specified; so that the Lessee of <sup>out Deed.</sup> the Person's Glebe (unless there be an exprefs Exemption) shall pay Tythes.

§ 3. Tythes should be paid in kind, unless there be a *Modus* established in <sup>*Modus* for</sup> <sup>Tythes.</sup>

CHAP. lieu of them; and such *Modus* becomes  
 XXII. a spiritual Fee, and is recoverable in  
 ——— the Spiritual Court: But if the *Modus*  
 be denied, it is not to be tried there;  
 for if Plea is held of it there, the tem-  
 poral Courts will grant a Prohibition:  
 And the *Modus* is to be tried by a Jury,  
 and if the Jury finds it, the Spiritual  
 Court may proceed:

The *Modus* should be to the Advan-  
 tage of the Parson, and a *Modus* to  
 pay one kind of Tythe for another is  
 not good.

§ 4. Notice should, by the civil Law,  
 be given to the Parson of the Times  
 the Tythes are set out, but by the  
 common Law it is not necessary.

Time for  
 taking  
 Tythes a-  
 way.

And he should be allowed a conve-  
 nient Time to take them away, which  
 is triable by a Jury; and if he exceeds  
 the Time, an Action of Trespass will  
 lie against him; or an Action on the  
 Case for Damages, if any Damage has  
 arisen thereby to the Parishioner:

If the Lands be in no Parish, the  
 Tythes thereof belong to the King.

Tythes præ-  
 dial, mixt,  
 and Personal.

§ 5. Tythes are Threefold, first  
 Prædial, such as are the Fruits of the  
 Ground, or the Fruits of Trees; as  
 Corn,

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Corn, Hay, and such Like, with Apples, Pears, &c. CHAP. XXII.

Secondly mixt, arising partly from the Ground, and partly from the Industry of Man; as Calves, Lambs, Pigs, Milk, Wool, &c.

And thirdly Personal; as such as arise from the Profits that accrue from the meer Labour and Industry of Man.

§ 6. The Tythes of Grist-mills and Corn-mills are reckoned *Prædial* Tythes, although they appear rather to be Personal, and they shall pay Tythes in kind; unless the Custom be otherwise, and they be antient Mills, and never paid from Time immemorial: for Mills erected within Time of Memory shall pay. Tythes of Mills.

§ 7. Tythes are also distinguished into Great and small. Great Tythes, such as Wheat, Hay, &c. and small, as Wool, Milk, Cheese, Lamb, Honey, &c. and Flax, when sown in Gardens, and all Tythes growing in them seem to be small Tythes.

§ 8. All Lands that have any yearly Produce are by the common Law subject to Tythes.



CHAP. Spiritual or mixt Persons are alone  
 XXII. capable of prescribing in *Non Deciman-*  
 do, in Discharge of Tythes; or a Coun-  
 Prescribing ty, or Part of a County, may plead a  
 in Discharge Custom *de Non Decimando* in Respect  
 of Tythes. of a particular Tythe:

Forrests. § 9. Forrefts in the Hands of the  
 King, or his Lessees, shall not pay  
 Tythes; but disafforrested shall pay, or  
 in the Hands of his Patentees:

Parks. So Parks disparked shall pay, un-  
 less there be a *Modus* to pay some cer-  
 tain Thing for all the Tythes expressly  
 of that Park:

A *Modus* to pay a Shoulder of Deer  
 for the Tythes of the Park is good, but  
 if to pay it out of the same Park, the  
*Modus* is gone:

Abby Lands. § 10. Abby Lands coming to the Crown  
 by the 33. of *Hen. VIII.* and given af-  
 terwards to the King's Patentees, are  
 discharged of Tythes in as ample  
 Manner as the *Abbots* themselves held  
 them discharged †:

§ 11. And those were discharged  
 first by Prescription; secondly by Com-

† *En. 31. Hen. VIII.*

position real; thirdly by Bull or Ca-  
non; fourthly by Unity of Possession  
Time out of Mind of Parsonage and  
Land without Payment of Tythes :

CHAP.

XXII.

§ 12. No Prescription is good if it  
be shewn that it begun since the first of  
R. I. and therefore religious Houses  
founded since cannot plead Prescription  
in Discharge of Tythes :

§ 13. Unity must be *justa*, as to  
the Title; not obtained illegally; *Per-*  
*petua*, from Time immemorial; *Æ-*  
*qualis*, with the Fee simple of the  
Lands and Rectory; and *libera*, that  
is free from the Payment of all Manner  
of Tythes whatsoever :

§ 14. And Unity of Possession shall  
not be a Discharge, if the Abbot leased  
his Lands at any Time before the Dis-  
solution, and his Tenants paid Tythes;

Or if it appears that his Abby was  
founded since the first of R. I. or that  
the Lands were since purchased by him,  
and he held them discharged as *Abbot*  
*Appropriator* :

§ 15. The Vicar shall not receive  
Tythe out of the Rector's Glebe :

Vicars.

CHAP. Vicars are generally entitled to all  
 XXII. the small Tythes, or one third of the  
 ~~~~~ Tythes, or rather to such as they can  
 prescribe for, or can claim by real Com-
 position :

If the Right of Tythes come in
 Question between Rector and Vicar, it
 shall be tried by the spiritual Court :

Spoliation.

§ 16. Where one Parson claiming
 under a different Patron takes away
 the Tythes of another belonging to
 that other Parson's Church ; and not
 amounting to a fourth Part of the Va-
 lue of that Church ; he may be sued
 in a Cause of Spoliation :

But if they amount to above a fourth
 Part, an *Indicavit* will lie ; and this can-
 not be obtained before the Libel, nor
 after definitive Sentence :

And if both Parsons claim under the
 same Patron no *Indicavit* lies.

§ 17. If the Bounds of Parishes come
 into Question, they cannot be tried by
 the spiritual Court :

Where Payment is pleaded in Dis-
 charge of Tythes, if Proof of it by one
 Witness

Beneficial Causes.

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Witness is not admitted, Prohibition
lies. CHAP.
XXII.

§ 18. If any incidental Matter of <sup>Incidental
Matters in</sup> temporal Conusance arises in the Suit, Tythes.
it may be tried in the Spiritual Court ;
provided the Proof which is good at
common Law be admitted :

But it is held, that if a Person claiming as Lessee of the Parson, sues another for Tythes, and that other pleads in Bar a prior Lease of the same Tythes from the same Parson, the Validity of the Leases cannot be tried there :

§ 19. Tythes may be claimed by Custom, of Things in themselves not tythable ; as Turf, Brick, &c. and, such Custom is to be alledged.

Wood of above twenty Years ^{Wood.} Growth is not tythable ; and where there is a Majority of such Wood it shall privilege the Under Wood.

C H A P. XXIII.

Of Proceedings in Suits for Tythes.

Persons sub-
strating
Tythes.

SECT. I. **B**Y a provincial Constitution in *Lyndwood*, all who substract, or hinder the Clergy from taking their Tythes, are excommunicated; and the antient Practice was, to send out a Monition against the Parishioners, or such of them, as substracted their Tythes, to pay them within a certain Time, under the Penalty of being pronounced to have fallen under the Sentence of Excommunication :

But now a Citation goes against such as pay not their Tythes, as in other ordinary Causes.

§ 2. On

§ 2. On the Day the Impugnant is to appear, his Proctor should exhibit his Proxy, and make himself a Party for him; and in Prudence it would be proper for him to offer what his Party (if he has subtracted) really thinks the full Value of his Tythes, with the Expences already made : Offer of Value.

§ 3. And the Promovent's Proctor (if he doubts whether the Sum be the full Value) should accept it as far as it makes for his Party; and pray Time to consult him, whether he will take it in full Payment, or in Part :

And the Judge shall give him to the next, or the Court Day after.

§ 4. And the Sum should be deposited with the Register at the Acts, that it may appear to be a real Offer; although it is held, that if the Sum be not clear, but Accounts are to be settled; that the offering a lesser really, and promising the Remainder upon settling Accounts is sufficient : Sum to be deposited.

As also a verbal Offer if the Promovent refuses expressly to accept it.

§ 5. If

CHAP.

XXIII.

§ 5. If the Promovent accepts the Sum on the Day appointed : he should pray that the Impugnant be condemned in the Costs, which the Judge shall do; and then the Proctor shall offer the Bill of Costs, which the Judge shall tax, and decree a Monition to have them paid :

And the Value of the Tythes in contest may be offered at any Time in the Suit.

§ 6. If the Promovent does not accept the Sum, but carries on the Suit; and does not prove more to be due to him, than what was offered; he shall be condemned in the Costs made from the Time the Sum was offered :

Value for
Tythes specified.

§ 7. Although it has been held that an Offering of the Value of the Tythes in general with the Costs was not sufficient, but that each particular Tythe should be specified; and that the Value should be offered specifically for each Species; because the Promovent could commence his Suit for each Species :

Yet

Beneficial Causes.

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Yet the better Judgments are against **CHAP.**
this: However to be secure, and to a- **XXIII.**
void all Disputes about it, the Value of ~~the~~
each particular Species may be ren-
dered.

§ 8. The Party offering the Sum is ^{Party offer-}
not to be condemned in Costs, when ^{ing the Va-}
the Sum is accepted by the other Party; ^{lue, not to}
if he can prove that he offered the ^{be condemn-}
Sum before Suit was commenced; and ^{ed in Costs.}
also at, or after, the Time Citation was
served upon him :

§ 9. And he must prove that he offer-
ed it also at, or after the Time he was
cited, as well as before, to prevent his
being condemned in Costs; and if he
proves this; the Promovent is to be
condemned in the Costs made upon
proving it; and in the other Costs :
But if he did not offer it at, or after
the Time he was cited, but offered it
before he was cited; the Costs are to
be moderated.

§ 10. If the Sum be offered after
Suit is contested, the Expence of defi-
nitive Sentence is to be added to the
Costs; because Contestation of Suit re-
quires no Sentence :

§ 11. And

CHAP.

XXIII.

§ 11. And if the Promovent will not receive the Sum offered, he is to be condemned in the Costs made from that Time: And the Impugnant condemned in the Costs made before, and in that of definitive Sentence.

§ 12. The Promovent's Proctor intending not to take the Sum offered, should accept it as far as it makes for his Party; and should alledge that he is ready to accept it in Part; and should give in his Libel, and pray an Answer:

Impugnant
to specify
for what
Tythe the
Sum is of-
fered.

§ 13. And it is held that upon the Petition of the Promovent, the Impugnant is to specify for what particular Tythe the Sum is offered; which may be of great Use if the Impugnant pleads a *Modus*, or a Discharge from a particular Tythe.

§ 14. When the Libel is given in, before the offer is made of the Sum in Value for the Tythes; and Tythes by it are demanded in Specie, for which by the Custom of the Parish only a cer-
tain

tain Sum is due; if the Impugnant offers a Sum in Gross for the Tythes, and the Promovent accepts it, the Impugnant seems to acknowledge the Tythes to be due in kind: CHAP. XXIII.

§ 15. So that in this Case he should offer the Sum due by the *Modus* for the Tythes libellate: And the Promovent by accepting the Sum so offered acknowledges the Custom of the Parish, so that here he should be cautious how he does it.

§ 16. Where particular and specific Tenders are made, the Promovent may accept some and refuse the rest; Some Tenders may be accepted, others reject-

And if they are made after Contestation, he may have Sentence for those Offers which he accepts, and have the Adversary condemned in the Costs of that Sentence and what went before, and may sue for the rest:

And if he proves more to be due than the Sum offered, he shall recover all his Costs; if he does not, he shall be condemned in the Costs.

§ 17. If the probatory Term lapses before the proper Proofs are made, New probatory Terms.
upon

CHAP. upon an Allegation that the Cause is
XXIII. the Cause of the Church, and that it
 would be of high Detriment to it not to
 renew the probatory Term: The Judge
 shall assign new Terms probatory in
 Presence of the Adversary's Proctor
 dissenting and protesting against it.

§ 18. And this is done only when
 a Clergyman, or his Farmer, sues for
 Tythes which the Impugnant denies
 to be due at all; or alledges a certain
 Sum to be due for them, and not the
 Tythes in kind: Not when the pri-
 vate Interest of the Promovent is con-
 cerned.

Appellant to
 be condemn-
 ed in Costs.

§ 19. As soon as Sentence is pro-
 nounced in a Cause of Tythes, although
 there be an Appeal from that Sentence;
 yet by a Statute * the Judge shall con-
 demn the Appellant in the reasonable
 Costs of Suit; shall tax them, and
 compel the Party by Ecclesiastical Cen-
 sure to pay them: Taking Surety of
 the other Party to whom the Costs are
 adjudged, to restore the Costs to the
 Ap-

* 33. Hen. VIII. Sess. I. c. 12. And in Eng.
 52. Hen. VIII. c. 7.

Appellant in Case the Cause pass against him in the Appeal. CHAP. XXIII.

§ 20. But the Party may appeal from the Taxation if there was a Nullity in it; as if he was not present when the Costs were taxed, nor lawfully cited, and so the Bill not taxed in Pain of his Contumacy;

Or he may appeal, if after it was taxed properly, he was not legally admonished to pay the same;

Or if there was too great Excess in the Costs, and they were too immoderate:

§ 21. For every Statute that restrains or alters the Common Law is to be interpreted strictly; and this only allows the taxing of the reasonable Costs in such Suits:

§ 22. And by the same Statute if the Person after definitive Sentence wilfully refuses to pay the Tythes, or the Sum so adjudged; then two Justices of the Peace may compel Payment. *(Quo Unus)* shall, upon Certificate in Writing made to them by the said Judge, commit the
I. Party,

CHAP. Party, to refusing, to the next Goal;
 XXIII. there to remain without Bail, until he
 find Sureties to be bound in Recognizance to the King, to perform the
 said Sentence and Judgment.

CHAP.

C H A P. XXIV.

Of Sequestering of Benefices.

SECT. I. **W**Here two Rectors, or Vicars, have been instituted to the same Benefice; the Right to which is contested by them; or where one Rector claims Tythes out of a Piece of Ground in another's Parish:

Or where a Living is any Way disputed between Persons, so that the Tythes are in Danger of being lost, or contended for by Blows:

§ 2. In these Cases, upon an Allegation made by the Proctor of either Party; the Judge shall decree Sequestration either to the Church-wardens of the Parish, or to some indifferent Persons during the Contest: Sequestration of a Parish.

§ 3. But if one of the Parties has been in quiet Possession of the Living before Suit was commenced by his Adversary; and such Possession has been

CHAP. proved ; Sequestration should be denied : Unless the Antagonist shews that the Cure is neglected, the Fruits of that Living dissipated ; and that there is a vehement Presumption of their fighting about them.

Caution to
be taken
from Sequestrators.

§ 4. When Sequestration is granted, sufficient Caution should be taken from the Sequestrators to oblige them faithfully to collect the Tythes ; and to restore them, or their Value, to the Person who shall be found to have a Right ; and to render an Account of them, whenever it shall be required :

Curate to be
appointed.

§ 5. And if the Cure be neglected, the Judge shall appoint a Clergyman to serve the Cure ; and shall order the Sequestrators to pay him a Salary which the Judge shall assign him.

Sequestration to be
published.

§ 6. The Sequestrators should take Care that the Sequestration be published in the Parish Church at the Time of Divine Service ; that the Parishioners may have proper Notice of it ;

§ 7. The Suit ended, the Sequestration is to be taken off, and the Tythes,

Beneficial Causes.

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Tythes, if they remain in Specie ; or if CHAP.
not, their Value to be given to the XXIV.
Victor :

And if the Sequestrators refuse to ^{Sequestrators}
pay, they are to be called to Account to be com-
pelled to ^{Account.}
for what they have received, and to be
compelled to pay them by Ecclesiasti-
cal Censures :

§ 8. Or if they defer paying, the
Judge may assign over their Bonds to
the Party grieved ; who may sue them
in the Temporal Courts upon them :

And Sequestrations are granted in
Causes of Dilapidations, and in many
other Cases.

End of the Beneficial Causes.

C H A P. XXV.

Of Matrimonial Causes.

Cause of
Contract of
Marriage.

SECT. 1. **I**F a Man has contracted Matrimony, but has not solemnized it in the Face of the Church, and the Woman denies such Contract; he may sue her in a Matrimonial Cause, or Cause of Espousals; or, as it is sometimes called, a Cause of Contract of Marriage:

Inhibition.

§ 2. And if the Promovent is afraid that during the Suit the Woman may contract or solemnize Marriage with any one else; he should have an Inhibition inserted in the Citation against her, that she should not contract Marriage during the Suit with any one else; nor (if contracted) procure it to be solemnized:

§ 3. And

Matrimonial Causes.

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CHAP.

XXV.

§ 3. And if he thinks or suspects that the Impugnant will marry a particular Person, he may have an Inhibition as well against the Party, and that particular Person, inhibiting them to marry; as against all others, inhibiting them to do any Thing to the Prejudice or Detriment of the Cause pending the Suit:

§ 4. If the Marriage has been solemnized, and the Man forsakes the Woman, or the Woman the Man; they may sue in a Cause of Restitution of Conjugal Rites.

Adultery prevents Restitution, unless a Compensation, that is, the Adultery of the opposite Party, or a Remission of the Crime be proved: And so does Cruelty, and such Causes as annul the Marriage from the Beginning.

§ 5. If a Man has solemnized Matrimony with one, and afterwards marries another; if the lawful Wife desires to be restored to her Husband, she may institute a Suit in a Cause of Divorce from the Tie of Marriage, and of Restitution of Conjugal Rites.

L 4

Marriage,

CHAP. Marriage, and of Restitution of Con-
 XXV. jugal Rites.

§ 6. And this Suit should be instituted against both the Man and second Woman that he married; for Sentence of Divorce is not valid against her, unless she be cited:

And what is said of the Man will hold of the Woman.

§ 7. Or, if the Woman in the second Marriage has a Mind to have that Marriage declared null, she may sue in a Cause of Divorce from the Tie of Marriage; and, from the Reasons above-mentioned, she here should institute the Action against the lawful Wife.

Persons
under
the Age of
Consent so-
lemnizing
Marriage
may dissent.

§ 8. If Persons under the Age of Twelve, being Females, or under the Age of Fourteen, being Males, but above the Age of Seven Years, contract and actually solemnize Marriage with each other; either Parties may dissent to the Marriage, when they come to the Age aforesaid:

§ 9. And this Dissent annuls the Marriage, and they may marry a Second,

cond, and such second Marriage shall be good; but it is usual to dissent before Witnesses, and a Notary Publick before the second Marriage; or to sue in a Cause of Nullity of Marriage to obtain Sentence for its Nullity; although they may marry without it.

CHAP. XXV.

§ 10. But if after they come to the Age of Twelve or Fourteen Years they shew any Signs of Consent to the first Marriage, by Letters, by calling Husband and Wife, and especially by knowing each other carnally, or lying together; they cannot enter into a second Marriage:

After they come to Age giving Tokens of Consent.

And if either of them does; the other, upon proving the Consent, may obtain Sentence of Divorce from the second Marriage, and for the Validity of the first:

the Marriage valid.

§ 11. And if the Man be above Fourteen at the Time of Marriage, and the Woman under Twelve; the Man may dissent to the Marriage as well as the Woman: For the Consent should be mutual to validate a Marriage; and the Advantage of Disagreement should be reciprocal:

And

CHAP. And so may the Woman in the like
XXV. Cause.

Marriages
within the
Degrees pro-
hibited.

§ 12. If Marriage has been solemnized between Persons within the Degrees prohibited, either Party may sue to be divorced from the Tie of Marriage; or rather should sue in a Cause of Nullity of Marriage.

Jaſtitution of
Marriage.

§ 13. If a Man ſhall treat of Marriage with a Woman, or perhaps has entered into a Contract in Words of the future Tenſe with her; and ſhe afterwards boasts of being married to him: he may ſue her in a Cause of *Jaſtitution of Marriage*; and ſo may a Woman in the like Cause.

Impotency,
Nullity of
Marriage.

§ 14. As Matrimony was ordained not only for avoiding Fornication, but for the Procreation of Children; if there be any Impotency in either Party, not on Account of Age, but through natural Impediments, ſo that they are prevented from having Children; the Party grieved has a juſt Cause of Nullity of Marriage.

§ 15. If

§ 15. If a Man behaves cruelly and inhumanly to his Wife, by abusing and beating her, or perhaps attempts her Life by Poison or other Means; so that she cannot live in Safety with him: She may sue him in a Cause of Separation from Bed and Board on Account of Cruelty.

Separation
from Bed
and Board.

§ 16. And she may sue in the same Manner on Account of Adultery, and so may the Man in both Cases *Vice Versa*.

§ 17. If the Parents or Friends of a Man or Woman, who have been at any Marriage contracted, or solemnized between them; or have known or heard of Sentence being pronounced for a Marriage between them, from which there was no Appeal; or if there was, the Appeal was deserted; shall (notwithstanding their being present, or their knowing of such Marriage) keep and detain the Woman; so that she cannot be cited to answer in a Matrimonial Cause:

§ 18. Or

CHAP.

XXV.

§ 18. Or if Sentence upon a Contract was pronounced for solemnizing the Marriage, and she is so concealed by them, that she cannot be convened for the solemnizing of it :

§ 19. Or if they endeavour by Threats and Perswasions to prevail upon her to deny her Marriage, and to alienate her Mind and Affections from her Husband :

Cause of Impediment of Marriage.

§ 20. In any of these Cases the Man may sue them in a Cause of Impediment of Marriage ; and upon Proof of the above Facts being made, they are to be corrected, and punished at the Discretion of the Judge, and to be condemned in the Costs :

A Woman in the same Circumstances may sue likewise.

Persons clandestinely married.

§ 21. If any Persons have been clandestinely married without License obtained, or Banns first published ; they may be proceeded against, and compelled to do publick Penance by the Ecclesiastical Judge from his meer Office, or Office promoted :

And

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And by a Cannon * in Force in this CHAP.
Kingdom, such Persons are obliged to XXV.
discover the Person marrying them,
under Pain of Excommunication; and
by Virtue of another † Canon the Cler-
gyman so marrying them (if benefic-
ed) shall be deprived, and if not de-
graded.

§ 22. See the *Irish Statutes* the 9.
Gul. 3. c. xxviii. The 2. *Ann.* Sess.
1. c. vi. in Part. 6. *Ann.* Part of c. xvi.
8. *Ann.* Part of c. iii. 12. *Geor.* I. c.
iii. 9. *Geor.* II. c. xi. 19. *Geor.* II. c.
xiii. 23. *Geor.* II. c. x. against Inter-
marriages with Papists, and Clandef-
tine Marriages.

* Can. 5 of Anne.

† Can. 52. Car. I.

CHAP.

And by Canon * in Force in this C. H. & P.
Kingdom, such Persons are obliged to
discuss the Person marrying them
under pain of Excommunication; and
by Virtue of another Canon the same
Person is obliged to marry them (if possible)
or shall be deprived, and if not

C H A P. XXVI.

Of Proceedings in Causes of Jactitation of Marriage.

Causes of Jactitation of Marriage.

SECT. I. CAUSES of Jactitation of Marriage are plenary Causes; and are of the same Nature of Causes of Defamation; with this Difference, that the Impugnant may be compelled to answer the Positions of the Libel; which cannot be done in Causes of Defamation: Because no Person should be compelled to criminate himself.

§ 2. And

§ 2. And if the Promovent proves that the Party accused had boasted of his, or her being married to the Promovent; and if the Party does not justify it by shewing the Marriage, Sentence is to be pronounced for the Promovent: And that the Impugnant rashly and unjustly boasted of such Marriage; and perpetual Silence is to be imposed upon him, and he is to be condemned in the Costs.

§ 3. If the Impugnant intends to justify the Jactitation, he may on the Day assigned him, or his Proctor, to answer the Libel, before Contestation, give in his Allegation; alledging the Marriage instead of an Answer; and under a Protestation of the Nullity, Ineptitude, too great Generality, Obscurity, and undue Specification of the said Libel should contest it Negatively.

§ 4. The Promovent should accept this Allegation as far as it makes for his Party; but as far as it makes against

him

CHAP. him should dissent by denying it to be
XXVI. true.

§ 5 For such an Allegation proposed frees the Promovent from the Burden of proving the Jactitation: For if the Impugnant does not prove his Justification, Sentence is to be pronounced against him, that he has failed in the Justification, that the Promovent has proved his Libel, and Silence is to be imposed upon the Impugnant; and he is to be condemned in Costs.

§ 6. But if he proves his Justification, Sentence is to be pronounced for him, that the Promovent has failed in the Proof of his Libel; and also Sentence given for the Marriage alleged: And the Promovent is to be condemned in Costs.

**Defensive
 Matter.**

§ 7. A defensive Matter, by Way of Justification, may be also given after Contestation of Suit; but if it be contrary Matter, it should be proposed before the Publication of the Depositions of the Promovent's Witnesses upon

Matrimonial Causes. 161

upon the Libel : That the Exception, CHAP.
that directly contrary Matter is not to XXVI.
be proposed after Publication, should
have no Place ; although it is a Ques-
tion, whether in matrimonial Causes,
as they are favourable Causes, such
Matter may not be proposed ?

§ 8. And if he proves his Justifica-
tion, he is to be absolved :

And it is likewise held, that if he
proves the Marriage, although it be
alleged after Contestation, he shall
obtain Sentence as before * pronounc-
ing for that Marriage ; as if (as a-
bove †) it was alleged before Con-
testation :

§ 9. But if in the Libel neither the
certain Time, or Place, in which the
Words of Jactitation were spoken are
mentioned ; but some Time in General,
as such a Month or Months : Contra-
ry Matter may be proposed ; because
before Publication the Impugnant
could not defend himself against so ge-
M neral

* Sect. 6. † Sect. 3.

CHAP. P. neral an Allegation: Which he may
XXVI. do after Publication.

§ 10. For Instance, If the Witnesses swore that the Words were spoken in a certain Place, at a certain Time; he may prove that he was in another Place at that Time; or that such Words were not spoken at that Time; or that he was married to the Promovent before that Time.

Suit for
Marriage.

§ 11. It is the Opinion of some, that the Impugnant may, during the Suit for Jactitation, commence a Suit for his Marriage, in a matrimonial Cause, against the Promovent, before the same Judge, or another; and not alledge his Marriage in Justification as before:

§ 12. But this at least argues Malice in the Impugnant, and an Intention to load his Adversary with great Expences: And it was formerly held improper,

Marrimonial Causes.

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improper, because two contrary Sen-CHAP.
tences may be pronounced in such XXVI.
Case by the same Judge.

M 2 : CHAP.

C H A P. XXVII.

Of Proceedings in a Matrimonial Cause.

Inhibition. SECT. I. **I**F the Promovent imagines that the Impugnant will contract, or solemnize Marriage, with some one else, while the Cause depends; he may have an Inhibition inserted in the Original Citation against the Impugnant to prevent it; and also an Intimation in General, against all others, with an Inhibition inhibiting them to do or attempt any Thing to the Prejudice of the Cause,
under

Matrimonial Causes.

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under the Penalty of the Law, and Contempt thereof: CHAP. XXVII.

§ 2. Or rather a particular Intima-
tion and Inhibition should be published
in the Parish Church of the Party at
the Time of Divine Service to that
Purpose; either the Time the Citation
was served, or before the Return of it: Intimation.

And then any Person solemnizing
Marriage with the Party after that,
may be punished for Contempt: Be-
cause his Knowledge of that Cause de-
pending is presumed; and he could
not be punished before such Inhibition
was published, if he was ignorant of
the Cause.

§ 3. If the Party suing in a matri-
monial Cause, sees that the Impug-
nant is concealed, or has left the King-
dom; and is afraid that his Witnesses
will die before they are examined; he
should have such Impugnant sought
after in the usual Place of his, or her
Abode, among his or her Relations,
and Neighbours.

M 3

§ 4. And

Citation by
Ways and
Means,

§ 4. And if upon such Citation the Party is not to be found, a Citation by Ways and Means should go; and upon it's being executed and certified, the Party should be excommunicated, and denounced as such in the Parish Church.

§ 5. And a Week or two after such Denunciation, the Promovent or his Proctor should alledge that all possible Diligence had been used personally to cite the Impugnant; and in Pain of his Contumacy in not appearing upon the Citation *Viis et Modis* that he was excommunicated; and denounced as such; as appears from the proper Certificate and denunciatory Letters, which he shall exhibit:

§ 6. And notwithstanding such Excommunication and Denunciation, that such Party lies concealed, or has left the Kingdom to delay Justice and to avoid the Suit; and that his Witnesses are so weak and infirm, that their Lives are in Danger, and that through Length of Time, and Infirmary of Age, they

they may forget the Words of the **CHAP.**
Contract. **XXVII.**

§ 7. Whereupon he prays that the **Publick E.**
Impugnant be cited by publick Edict **dis.**
(to be affixed on the Doors of his Pa-
rish Church; or the publick Change
where Merchants resort) to appear
within a certain Time (not less than
Thirty Days) to answer the Promo-
vent in a Matrimonial Cause; to see a
Libel given in; a Term assigned to
prove it; Witnesses produced, sworn
and examined thereon; Publication
of their Depositions, to propose his De-
fence, or Exceptions, and to see a Term
assigned to hear Sentence, and Sentence
pronounced; and to be present, and at-
tend every Court Day until definitive
Sentence be given:

§ 8. And an Intimation should be
inserted in the same Citation, that the
Judge intends to proceed (notwith-
standing the Party's Absence, or rather
Contumacy) to each Particular speci-
fied as above:

M 4

§ 9. And

CHAP.

XXVII.

§ 9. And the Citation being returned, and the Service proved or certified; the Party should be thrice called, and not appearing, pronounced contumacious: And they should proceed to each Particular in Pain of his Contumacy.

§ 10. The Certificate of the Original Mandate should be continued from Day to Day, that there be no Discontinuation in the Cause *.

§ 11. But the safest Method would be (after the Witnesses are produced, and examined) to cite the Party Impugnant to some particular Effects; as, to see the Publication of Witnesses; and to propose his Exceptions against them if he has any, or any other Matter he pleases: And also to see a Term assigned for Sentence, and to be present at Sentence: with Intimation as before.

Commission
for Examination
of
Witnesses.

§ 12. If the Witnesses cannot be produced in Court, and a Commission for their

* See Chap. vii. Sect. 13, 14.

their Examination be necessary, a particular Citation should go to cite the Impugnant to appear before the Commissioners at a certain Place, and a fixed Time, to see Witnesses produced, &c. with Intimation as before.

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XXVII.

§ 13. Upon the Promovent's swearing that the Woman remains among her Relations and Friends, who are averse to the Marriage; and restrain her in such a Degree, that she is afraid to confess the Truth; she may be sequestered some Days before her Examination to any Matter alledged by him: Sequestering
the Woman.

§ 14. Or she may be sequestered during the whole Suit, upon proper Reasons alledged:

As upon her marrying another notwithstanding the Inhibition to the contrary; and the Man and she so marrying are to be punished at the Discretion of the Judge:

Or when a Woman is sued by two for their Wife:

Or if, after Sentence be given against the Marriage, and there is an Appeal upon

CH A P. upon that Sentence, she marries another
XXVII. ther pending the Appeal :

Or upon the Cruelty of an Husband she may be sequestered ; and deposited in a proper Place, that is indifferent to both Parties ; at the Expence in all Cases of the Party praying the Sequestration.

§ 15. The Promovent or his Proctor (if she is to be examined) may go to her at proper Times, and read over the Articles she is to be examined upon to her, and admonish her to declare the Truth :

And Sequestration is usually granted on the Allegation of the Proctor, without the Oath of the Party.

Monished to
undergo the
Sequestration.
on.

§ 16. And she is to be monished to undergo the Sequestration, and (if the Judge thinks fit) inhibited personally to marry another during the Suit.

Sequestra-
tors.

§ 17. And Persons are usually named on both Sides with whom she is to remain ; and the Judge usually appoints

Matrimonial Causes.

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points one of them Sequestrator, if there be no Exceptions against him; and if there be, the Judge appoints one himself: CHAP. XXVII.

And it is held in such Cases, that the Personal Answer should be taken privately, as the Depositions of Witnesses, and not drawn by the Proctor.

§ 18. But the Woman solemnizing Marriage during the Suit, if the Man she so married knew nothing of the Suit; is not to be sequestered: Because he should not be punished on her Account, and for her Fault:

§ 19. But if a general Inhibition was published as laid down in the Beginning of this Chapter, his Knowledge of the Suit is presumed; and she is to be sequestered.

§ 20. If a Person inhibited marries another, while the matrimonial Suit depends; as soon as the Judge has Knowledge of it, he should proceed against him for Contempt: for the Contempt

Marrying another guilty of Contempt.

CHAP. Contempt is the same, whether the
XXVII. Contract be proved, or not:

§ 21. And if Proctor or Advocate advised such Marriage, he should be suspended at the Discretion of the Judge:

The Confession of his Client is just and sufficient Evidence of his advising it, and Cause for his Suspension; unless he purges himself from such Charge.

§ 22. It is questioned whether that Marriage clandestinely solemnized during the Suit be valid; and it would be the most effectual Stop to such Proceedings, if such Marriages were annulled:

§ 23. But how far the 33. of *Hen. VIII. Sess. 1. c. vi.* * interferes here, will appear from the Words of it; which are "that all Marriages contracted between Parties not prohibited by God's Laws, being solemnized in the Face of the Church, and consummate with bodily Knowledge, shall

* 32. *Hen. VIII. c. xxxviii. En.*

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" shall be good and lawful notwithstanding any Precontract before the Time of this Marriage without Consummation." CHAP. XXVII.

§ 24. Witnesses may be produced after Publication (without an Allegation that they came since that to the Knowledge of the Party) at any Time in the Suit: Witnesses may be produced after Publication.

And though Sentence be pronounced, and the Impugnant dismissed; yet the Promovent may institute a new Cause from the same Contract, or another; and produce the same Proofs, or others that he knew, or did not know before: For this is a privileged and a favourable Cause.

§ 25. In every Cause in which the Wife sues the Husband, or the Husband the Wife; as soon as it appears to the Court that Marriage was solemnized between them; the Proctor for the Wife should alledge that the Marriage appears, and pray that the Expences of the Suit and Alimony be assigned her: the Alimony.

§ 26. The

§ 26. The Judge (the Proctor giving him a Schedule of the Expences, and the adverse Proctor having a Copy of it, that he may make what Objections he pleases to it) shall tax it.

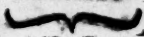
Taxing the
Expences
and Alimony.

§ 27. And afterwards (the Circumstances of the Husband appearing) shall assign her Alimony according to the Husband's Condition, at a certain Sum *per* Week, to be paid during the Suit, from the Time of the Service of the Citation; unless it shall be otherwise decreed by the Judge:

§ 28. And it is the most just Way to assign Alimony from the Time Citation was served, or returned; and not from the Time it issued: Because it might lie some Time without being served:

And the Husband may alledge his Poverty and prove it, if the Taxation be too great.

§ 29. The Proctor for the Wife should alledge, and propound in the Libel,

Libel, the Money or Substance given CHAP.
as a Portion with her, and the Value XXVII.
of the Husband's Assets and Possessions, 
that it may appear to the Judge what
Alimony he is to assign her from the
Husband's personal Answer which may
be had to the Libel :

§ 30. Or his Neighbours may be
examined *viva Voce* in a summary
Way with Respect to his Circumstan-
ces; and the Judge shall assign a
Third, or at least a fourth Part of the
yearly Value of his real Estate: Or
if he has none, he shall be taxed ac-
cording to his Dignity, and the com-
mon Fame of his Personal Fortune;
and a Monition shall issue for the Pay-
ment of the Sum taxed.

§ 31. And although the Husband al-
leges that his Wife is an Adulteress,
or that she had elsewhere to maintain
the Suit, and to support herself, and al-
though his Witnesses produced prove
this: Yet it is held by some that not-
withstanding all this, Alimony shall be
assigned.

CHAP. assigned, unless they had concluded in
 XXVII. the Cause: for that nothing is proved
 as long as any Thing can be objected on
 the adverse Side, or before Sentence,
 but *quære?*

§ 32. If the Promovent, in a Matrimonial Cause, shall prove the Contract by one Witness beyond all Exception, and the treating upon it by others: Or a Recognition and Acknowledgment of the Contract by both the Parties present by two Witnesses.

§ 33. Or if one of the Parties be absent, if the treating of the Marriage be proved: Or if he proves a Contract in Words of the future Tense by two Witnesses, and the treating upon it by the same or other Witnesses.

§ 34. Or if he proves a Marriage in Words of the present Tense by two Witnesses, and such Proofs are invalidated by lawful Exceptions unknown to the Party producing them.

§ 35. Or

§ 35. Or if his Witnesses proved of no Use by Reason of a prior Contract, or Marriage, or a subsequent Marriage solemnized during the Suit.

Adversary condemned in Costs though obtaining Sentence.

In any of these Cases his Adversary is usually condemned in the Costs expended by him.

§ 36. And if the treating of the Marriage, and the giving and receiving of a Ring be proved; the Judge usually absolves the Promovent from the Costs of Suit.

Promovent absolved.

§ 37. When Sentence is pronounced for a Marriage; the Impugnant should be cited to shew Cause why Sentence should not be executed: And after Sentence is ordered to Execution, a Monition issues against the Party to solemnize such Marriage within a certain Day appointed therein; or to appear the Court-Day after to shew Cause why he should not be excommunicated.

Sentence executed.

CHAP.

XXVII.

Monition.

§ 38. But the present Practice is, that after the Time for appealing Lapses, a Monition be issued against the Party, to solemnize the Marriage within a fixed Day after he be served with it; under Penalty of Excommunication pronounced upon him in such Monition in Default; if such Marriage be not solemnized within that Time: And an Order for denouncing him excommunicated in that Case is contained in the said Monition.

Marriage to be solemnized.

§ 39. And the Party requiring the Solemnization of the Marriage should procure a Licence for it; and the adverse Party should be applied to appoint a Day for the Celebration of the Marriage: And if he will not, the Promovent should appoint one, and signify it to the Impugnant, if to be found; or otherwise protest concerning it before Witnesses.

§ 40. And on the Day appointed he should go to the Church where the Marriage is to be solemnized, and should

should have the Clergyman ready, **CHAP.**
and wait the Coming of the Impug- **XXVII.**
nant; (who not coming) the Pro-
movent should protest before Witnes-
ses concerning his being present; and
his Diligence in endeavouring to have
the Marriage solemnized.

§ 41. On the Day assigned to re- **Return of Mo-**
turn the Monition, the Service of it **nition.**
being certified, and (for the greater
Security) the other Things as above
* being proved by the Party; the
Party Impugnant not appearing to al-
ledge any Cause why he did not so-
lemnize the Marriage is in Penalty
of his Contumacy to be excommuni-
cated: And afterwards to be pro-
ceeded against as in other Causes.

§ 42. Or, as it is at present,
forty Days after he has been de-
nounced excommunicated according
to the Tenor of the Monition; the
Service of it should be certified,
and the Denunciation of the Party
proved.

N 2 § 43.

* Sect. 39, 40.

CHAP.

XXVII.

If Contumacious to be excommunicated.

§ 43. Then the Proctor should alledge that he stood out excommunicated for forty Days, and pray that the Judge may signify for the Writ *De Excommunicato Capiendo*; and if the Party be imprisoned upon it, and alledges that he is ready to solemnize the Marriage, the Judge or his Surrogate shall go to him to administer the Oath for obeying the Laws Ecclesiastical; or shall grant a Commission for that Purpose: And he shall be absolved only to a Day certain; and sufficient Caution shall be taken from him for the Performance of the Marriage.

§ 44. But if after he is at Liberty he will not solemnize the Marriage; it is a Question whether the Judge can by Virtue of the former Excommunication and Denunciation write for the Writ *De Excommunicato Recipiendo*; as he was only absolved to a Day.

Or whether he is to be Monished, Excommunicated, and Denounced as before;

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before; and this is certainly the safest CHAP.
Way: XXVII.

And the Judge may assign over his
Bonds to the Party injured.

FAH 2
JIVXX

CHAP. XXVIII.

Of Causes of Divorce.

Sentence in
Causes of Di-
vorce.

SECT. I. **I**N Causes of Divorce, and Nullities of Matrimony, Sentence shall not be pronounced upon the sole Confession of the Parties, however taken upon Oath: And Circumspection and Caution should be used in sifting out the Truth by the Depositions of Witnesses; or other lawful Means; for it often happens that Persons willing to separate make Confessions for that Purpose *.

Parties separated not to marry during each others Lives.

§ 2. And it shall be inserted in all Acts of Sentences for Separation *a Thoro et Mensâ* †, that the Parties shall not marry, but live chastly during each others Life; and sufficient Caution and Security shall be given (before Sentence be pronounced) by the

* See Can. 53. Car. I.

† See Can. 55. Car. I.

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the Party or Parties requiring the **C H A P.**
Divorce that they will not transgress **XXVIII.**
such Prohibition.

§ 3. If the Impugnant proves that **Compensation.**
the Promovent likewise committed
Adultery, there is a Compensation of
the Crime: and there shall be no
Separation.

§ 4. Or if the Impugnant proves **Injury for-**
that the Promovent had Knowledge **given.**
of the Crime committed, or was pro-
bably acquainted with it, and after-
wards was reconciled to, and had
carnal Knowledge of the Party; no
Sentence for Separation shall be gi-
ven; because the Injury was for-
given.

§ 5. Such is a probable Know-
ledge, as if the Husband suspecting
the Wife accused her, and she con-
fessed the Crime:

Or if the Witnesses produced told
the Husband some Time before the
Suit was instituted, that they were
Eye-Witnesses, and could swear to the
Fact.

N 4

Or

CHAP. Or if the Husband caught her in
 XXVIII. the Act of Adultery.

Impotency.

§ 6. In Causes of Divorce for Impotency upon Petition of the Party alledging the Defects; the Judge may compel the Man (if he be the Person alledged to be defective) to appear in a certain Place; and subject himself (if the Defects be visible) to the Inspection and Examination of skilful Persons, Physicians, &c. who shall (having first been sworn diligently to inspect) return the Defect or Disorder to the Court, and that it is in their Opinion incurable; if they think so.

§ 7. It should be also alledged on the Part of the Woman, that she is young, fit for Procreation of Children, and that they lived, and lay together for three Years; and although desirous of it, yet she was never known by her Husband.

§ 8. But if the Impotency appears immediately three Years Continuance together is not necessary.

§ 9.

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XXVIII.

§ 9. If the Defects do not appear plainly, she (besides the Allegations mentioned) should alledge that she is a Virgin untouched, and not known by any one.

§ 10. And to prove this, Midwives and experienced Matrons are to be produced, and sworn to inspect her, and if they return upon Oath that she is a Virgin, upon the concurrent Circumstances of her being young, and living together for three Years, &c. Sentence shall be pronounced for the Nullity of such Marriage.

The End of the Matrimonial Causes.

CHAP.

...the Defects do not appear XXVIII.
...the Allegations
...the is
...not known
...by the one

...And in the Matter of the
...and expert need to be pro-
...and to the fact that
...it may remain open to the
...a variety upon the common
...possibilities of the being wrong, and
...being together for three years
...therefore shall be presumed for the
...of such Manager

The End of the Manuscript

C H A P. XXIX.

Of Wills and Testaments.

SECT. I. **A** Testament is the just Sentence of our Will concerning what we would have done with our Substance after our Death, together with the Appointment of an Executor: And it differs from a Will or Codicil in the appointing an Executor, for this is essential to a Testament. Testament.

§ 2. Codicils are for the Explanation or Alteration of something in the Testament, or the Addition to, or Substraction of something from it: And there may be as many as the Testator pleases, if not contrary to each other. Codicils.

§ 3. If in two Codicils (it not appearing which was the last) one and the

CHAP.

XXVIII.

If the Doctor do not appear
plainly, the (better the Allegations
unimpaired) should judge that the is
rights untouched, and not known
by any one.

And to prove this, I believe
and experienced persons are to be pro-
duced, and I am to confess that, and
it may remain upon Oath that the is
a Virgin upon the continent. Ch.
circumstances of her being young, and
being together for three Years. It
is not that she is promised for the
future of such things.

The End of the Manuscript Chapter

C H A P. XXIX.

Of Wills and Testaments.

SECT. I. **A** Testament is the just Testament.
Sentence of our Will
concerning what we would have done
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together with the Appointment of an
Executor : And it differs from a Will
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ment.

§ 2. Codicils are for the Explana- Codicils.
tion or Alteration of something in
the Testament, or the Addition to,
or Subtraction of something from it :
And there may be as many as the
Testator pleases, if not contrary to each
other.

§ 3. If in two Codicils (it not ap-
pearing which was the last) one and
the

CHAP. the same Thing be devised to different Persons ; it shall be divided between them.

Lands devised.

§ 4. Lands may be devised by Will without Executors ; and they shall be in Writing signed by the Party devising them, or by Somebody by his Directions ; and attested and subscribed by three or more Witnesses in his Presence : And no Devise of Lands, &c. shall be revocable but by Will or Codicil in Writing, or other Writing declaring the same ; or by burning or cancelling the same by the Testator, or in his Presence, and by his Directions *.

And Devises of Lands, Tenements or Hereditaments are not cognizable in the Ecclesiastical Court.

Testaments
adviseably to
be made.

§ 5. Testaments should be adviseably and deliberately made ; the Testator should be *Compos Mentis*, & *sui Juris* ; his Will should be independent,

* See the *Irish Stat.* of 7 Gul. 3. Sess. 1. c. 12. 29 Car. 2. c. 3. *Eng.*

Wills and Testaments.

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dependent, without Fear, Fraud or Coaction: It is Ambulatory to his Death; so that no Manner of Expression in his Will shall disenable him from making another.

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The Civil Law requires seven Witnesses to a Testament; but with us two are sufficient; except to a Will devising Lands.

§ 6. Wills are written or Nuncupative. Nuncupative Wills are not good where the Estate bequeathed in them exceeds the Value of Thirty Pounds; unless it be proved by the Oaths of three Witnesses that were present at the making thereof.

Wills Nuncupative.

§ 7. Nor unless the Testator, at the Time of its being pronounced, bid the Persons present, or some of them, take Notice that such was his Will, or to that Effect: Nor unless it was made in the last Sickness of the Deceased, in his own House; or where he resided for ten Days

C H A P. Days before; unless he was surprized and taken sick from Home *.

XXIX.

§ 8. And no Testimony shall be received to prove such Nuncupative Will, after six Months pass from the Time it was spoken: Unless such Testimony, or the Substance of it, was committed to Writing within six Days after making said Will.

§ 9. No Probat shall be given of such Will till fourteen Days from the Testator's Death expire; nor unless Citation issues to call the Widow, or next of Kin, to contest the same if they please.

And no Will in Writing concerning a Personal Estate shall be repealed, or otherwise altered, or changed by a Will by Word of Mouth only; unless it be committed to Writing, read to, and allowed of by the Testator, and that proved by three Witnesses at least.

§ 10.

* 7 Gul 3, ut antea.

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CHAP. XXIX.

§ 10. As to the Method of granting Administrations in Cases of Intestacy, and also the Method of distributing Intestates Estates, See the Stat. 28 Hen. 8. c. 18. 10 Car. 1. Sess. 3. c. 10. 7 Gul. 3. Sess. 1. c. 6. with the reading thereon in *Robbins's Abridgment* *.

No Witness that is a Legatee can be admitted such without renouncing his Legacy, and leaving such Renunciation with the Register. See the late *Irish Statute* 25 Geo. 2. cap. 11.

* 21 Hen. 8. c. 5. Eng. 43 Eliz. c. 8. Eng. 22 & 23 Car. 2. c. 10. Eng.

CHAP.

C H A P. XXX.

Of Testamentary Causes.

Oath of Executor.

SECT. 1. **A**S the Oath in *Animam Domini* is prohibited Proctors; the Executor should personally exhibit the Testament; or if not able to attend, should procure a Commission to some Persons to administer to him an Oath that he believes it to be the true last Will and Testament of the Deceased; that he will pay the Debts and Legacies according to Law, as far as the Assets extend*.

§ 2. And that he will have the Assets appraised, and a true Inventory formed of them, and returned within a certain Day, which the Court shall appoint: And Letters of Administration shall be granted to the Executor, and the Judge shall assign him a Day for returning an Inventory.

This

* Can. 78. Car. 1.

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This is proving a Will in Common C H A P. Form, and it may be questioned at any XXX. time within thirty years after.

Proving in
Common
Form.

§ 3. An Inventory is a Description of the Goods and Chattels of the Deceased, valued by four indifferent Persons of the Neighbourhood, two of which should be at least his Creditors, or Legataries; and it is to be begun within thirty Days after the opening the Testament, and finished within sixty after, if the Goods be near each other; or if remote, within one year: And no Executor is to be sued till after such times. Inventory.

§ 4. Proving a Will in Form of Law is done by citing the Widow or next of Kin to be present when the Will is exhibited; Witnesses produced, admitted, sworn, and examined upon it; their Depositions published, and the Validity of the Testament pronounced for: Proving in Form of Law.

And in this case the Executor is not to be compelled to prove it any more.

§ 5. An Administrator, where a Person died intestate, is to swear that he believes there was no Will before he can take Administration; and that he will
O give Administrator.

CHAP. give in an Inventory (as before in the
 XXX. Case of an Executor) and he is to give
 sufficient Security for his distributing the
 Assets according to Law, and giving in
 an Account :

May be com-
 pelled to ac-
 count.

§ 6. And although a Day is assigned
 him to give in an Inventory and an Ac-
 count; yet it is held, that an Execu-
 tor or Administrator may be compelled
 to do it before that Day, by a Legatee,
 next Relation, or Creditor.

Temerary Ad-
 ministration.

§ 7. Before a Cause of Temerary
 Administration be instituted, the Exe-
 cutor or Administrator, intending to sue,
 should shew the Person to be sued his
 Letters of Administration; and before
 Witnesses desire him to give up the
 Goods of the Deceased, which he has
 in his Hands, that they may be applied
 to their proper Uses.

§ 8. And if he will not give them
 up, the Executor or Administrator
 should sue him in a Cause of Tem-
 erary Administration, or may cite him
 to answer Articles at his Promotion.

Sentence in
 Temerary Ad-
 ministration.

§ 9. The Nature of the Sentence in
 such Cases is, that such a Person is lawful
 Executor

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XXX.

Executor of the Deceased ; that the Impugnant hindered the Execution of the Will by temerariouſly adminiſtering and detaining ſuch and ſuch Goods of the Deceased ; for which he is to be pronounced to have fallen into the Sentence of Excommunication pronounced by Law ; and to be excommunicated : And he is to be denounced as ſuch, and proceeded againſt as againſt any other excommunicated Perſon, and to be condemned in the Coſts.

§ 10. If an Executor about to prove a Will in proper Form is afraid that the Impugnant will abſent himſelf, and prove contumacious, and ſo give great Delay : And if his Witneſſes are of precarious Lives, he ſhould inſert in the original Citation an Intimation, that whether the Impugnant appears or not, the Court will proceed in the Cauſe, and in his Abſence in Penalty of his Contumacy : And Intimations of the ſame Kind are inſerted in many other Teſtamentary Cauſes.

§ 11. If an Executor or Adminiſtrator be called before the Judge of the Court of Prerogative in any Teſtamentary Cauſe : Or if the next of Kin,

C H A P.
XXX.

Dissenting to
the Jurisdic-
tion of the
Prerogative.

having a right to the Administration, be cited to accept or refuse it; his Proctor may appear under a Protestation of not assenting to the Judge, and alledge that the Jurisdiction of the Court is not sufficiently founded; for that the Deceased did not die possessed of *Bona Notabilia* in any Diocese or Peculiar, but that in which he died.

§ 12. And the Proof that he had *Bona Notabilia* shall lie upon the Promovent; and the Impugnant (if the Promovent proves it) shall be condemned in the Costs of the Proof, and be obliged to answer:

Or the Impugnant may plead that he is not obliged to obey the Mandate, unless the Jurisdiction of the Court first appears.

§ 13. If a Will be contested that is written out entirely, or subscribed by the Testator, and the Witnesses to it are dead:

Or, if any Instrument incidentally brought in be exhibited; and the subscribing Persons are likewise dead.

Exhibiting In-
struments.

§ 14. In these Cases, if the Party has any other Instruments subscribed by
the

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the same Persons, or Witnesses, to which he can produce living Witnesses: Then the Proctor may exhibit them in Proof of his Allegations; and alledge that such are subscribed by the Name of the Testator, and of those Persons mentioned in the first Exhibits; and by the very same Hand with which the Will, or the first Exhibits are subscribed; and this Allegation is to be propounded jointly and severally, as all other Allegations are.

C H A P.

XXX.

§ 15. And then he shall produce Witnesses to this Allegation, and after Publication, if his Intention be proved, and it appears that the second Instruments, or Writings exhibited were signed, and subscribed by the Persons whose Names are subscribed and signed to the first Exhibits; he shall alledge that he has sufficiently founded his Intention by the Depositions of the Witnesses, and shall refer himself to them, and the Exhibits aforesaid, and the Law:

To obtain.

§ 16. And he shall pray that a Comparison be made between such Words (these particularly to be specified) in them; and such Words in the first Exhibits; that is, the Names subscribed

A Comparison
of Hands.

C H A P. to both Exhibits; by skilful Person;
XXX. sworn faithfully to compare the same
 and to return their Judgment on a Day
 certain; and the Judge shall decree ac-
 cordingly.

§ 17. And four or six of the Proctors
 most skilful in Writing shall be sworn
 to that Purpose, and they shall meet in
 a Place indifferent to both Parties with
 the Register to produce the Exhibits.

Comparators
 to return their
 Judgment.

§ 18. And the Adversary or his
 Proctor may be present to give any In-
 formation to the Comparators; and they
 are to return their Judgment in Writing
 subscribed by their own Names:

And this is to be exhibited on the
 Day appointed by the Party praying the
 Comparison; the Adversary dissenting
 if the Similitude be confessed; if not,
 accepting it as far as it makes for his
 Party.

Will entirely
 in the Testa-
 tor's Hand.

§ 19. If a Will be written entirely
 in the Hand-writing of the Testator;
 or if it be written by another, and sub-
 scribed by him, and not published and
 acknowledged before Witnesses; if it
 be proved by the Executor, that it was
 found immediately after the Testator's
 Death

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Death among his valuable Papers, before such an one could be written; and the Comparators shall declare that it is the Testator's Hand-writing; this shall be confirmed, especially if it be a Will containing Dispositions among Children, or for pious Uses.

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XXX.

§ 20. Or if one Witness proves the Will, and it be found by comparing the Writing that it is signed by the Testator's Hand, it is sufficient.

§ 21. Or if it be proved by two Witnesses that the Testator confessed, and declared that he made a Will, without declaring the Contents, or where it was; if the Writing agrees to the Testator's Hand, it is held that it shall be pronounced valid, especially if it be a Disposition among Children; or for pious Uses.

C H A P. XXXI.

Of calling Executors, &c. to account.

Legatary may
compel Exe-
cutors to ac-
count.

SECT. I. **A** Legatary not paid his Legacy, and the Executor refusing to pay him through want of Assets; or a Creditor in such Circumstances may compel the Executor to exhibit an Inventory, and to render an Account of the Assets he has administered.

§ 2. And the Person requiring and bringing him to account shall not be condemned in Costs, unless he contests the Account, and compels the Executor to prove it.

Residuary Le-
gatee, or
Minor.

§ 3. A Residuary Legatee, and a Minor being a Legatee, may sue for an Account by his Curator or Guardian, which the Court shall assign him; and the next of Kin to an Intestate may likewise compel the Administrator to account,

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count, that the legal Distribution may be made amongst them. C H A P. XXXI.

§ 4. And if the Residue of the Testator's Fortune be not at all disposed of, and the Executors are left a particular Legacy for executing the Will; so that they are *Nudi Executores*: It is held that the Judge from his meer Office may call them to an account; or at the Instance of those interested, and order a proper Distribution of such Residue. Distribution of Residue.

§ 5. The Executor called to account must appear personally, unless the Interest of the Person citing him does not appear; and he denies that he is interested: and his Proctor exhibiting his Proxy for him shall alledge that his Party is not obliged to answer the Citation, unless the Promonent's Interest first appears. Executor must appear personally.

§ 6. And if he proves his Interest, the Impugnant shall be condemned in the Costs made upon the Proof, unless he can shew some Probability of his not knowing it; and when the Interest of the Promonent is proved, he does not contest the Proof, or take Exceptions against the Witnesses: the Reason why the

CHAP. the Executor must appear personally is,
XXXI. because he must swear to the Truth of
 the Account.

§ 7. The Certificate of the Mandate to exhibit his Inventory and Account should be continued from Day to Day *, until Proof of the Promovent's being interested be made ; and that done, the Impugnant may be excommunicated, if he does not obey the Tenor of the Mandate.

Creditor proving his Interest.

§ 8. A Creditor to prove his Interest may alledge that the Testator was in Debt to him, and may shew his Bond or Obligation, and prove it by one Witness ; or by his Book, where he keeps his Accompts, if he be a Merchant, and proves it to be his Accompt Book.

In such Cases full Proof is not necessary, (for it being an incidental Temporal Matter) one Witness to it is sufficient.

§ 9. As the Impugnant is cited to appear personally to give in his Account upon Oath, Infirmary or other just Causes being alledged and proved by his Proctor ;

* See Chap. VII. Sect. 13, 14.

Testamentary Causes.

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Proctor; a Commission to have him sworn and examined upon the Accompt shall be granted, and executed as other Commissions; the Adversary being monished to attend; and if he does not, all should be done in Penalty of his Contumacy.

C H A P.

XXXI.

Commission
for taking Ac-
compt.

§ 10. When Inventaries are formed, the Goods and Chattels of the Deceased are to be appraised, and valued by some honest Persons of the Neighbourhood, and reduced into an Inventory, which the Executor or Administrator shall (by Virtue of the former Oath taken by him, at the Time Administration was granted) exhibit; Inventory exhibited.

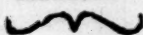
But if he be cited to return an Inventory, he then is specially to swear to the Truth of it.

§ 11. One Inventory subscribed by the Party exhibiting it is to be left with the Register; and another subscribed by the Register is to be given to the Party:

And this Inventory thus formed and exhibited, if the Party swears it to be true, has full Credit in every Cause; and (as it is held) frees the Executor from proving the Truth of it; or that the Testator had no more Assets: and the

Testamentary Causes.

C H A P. the Proof that he had, shall lie upon his
XXXI. Adversary.



§ 12. If Lands be devised to be sold for the Payment of Debts or Legacies; neither the Money raised, nor the Profits are reckoned the Testator's Goods or Chattels.

Inventory before Letters of Administration.

§ 13. A Party having Interest in the Estate of the Deceased can compel the Executor or Administrator before Letters of Administration issue under the Seal of the Court, to exhibit an Inventory upon oath: And also at the Petition of the said Party at the same Time, the Judge may grant a Commission to certain Persons to appraise; and to return an Inventory of the whole personal Estate of the Deceased.

Commission for appraising Testator's Assets.

§ 14. And a Monition issues to some one in particular, and to all others in general, possessing any of the Goods of the Deceased to exhibit them to the Appraisers, for the Purposes aforesaid, under Penalty of the Law and Contempt thereof:

And the Commission being executed, the Inventory is to be exhibited, subscribed

scribed at least by two of the Commis- C H A P.
sioners. XXXI.

§ 15. In Accompts the Executor is Accompts.
to charge himself with the Value of all
the Assets specified in the Inventory;
and the Debts of the Testator (such as
are paid and not paid to be specified) the
Funeral Expences, the Charge of prov-
ing the Will, and the Costs (if any) of
recovering or defending the Goods of
the Testator are to be deducted out of
this, that it may appear what Sums re-
main unadministered in his Hands.

§ 16. Although an Inventory be re-
turned, and an Accompt given in at the
meer Office in the Absence of the Party,
yet the Executor may be cited, at the
Instance of any one properly concerned,
to return a true and full Inventory of all
the Goods of the Deceased; and person-
ally to render an Account of his Admi-
nistration; and he is to do that upon
Oath if required; and he may exhibit
the former Inventory, swearing that it
is perfect.

§ 17. And this Inventory is not to be
exhibited under a Protestation of adding
to it, as it is usually done when exhi-
bited

CHAP. bited in common Form: But it must be
 XXXI. full and perfect; and if it be not, the
 Party exhibiting it may be proceeded
 against for Perjury, as he swears it to
 be a true and full Inventory :

And the Adversary may reprove and
 object against this Inventory, although it
 has been doubted, whether he could do
 so after demanding his Oath upon it, that
 is, the Executor's Oath.

Small Sums al- § 18. Small Sums, not exceeding
 lowed the Exe- forty Shillings, shall be allowed the
 cutor upon his Executor on Account upon his own
 own Oath. Oath :

And an Allegation from his Proctor
 (as he the Executor swore before to the
 Truth of the Account) that he expend-
 ed such Sums is sufficient, without the
 Executor's appearing again, and swear-
 ing that he did so :

But if he divided fraudulently great
 Sums into small Sums, he is not to be
 allowed them.

Debts of the
 Testator paid
 proved legal.

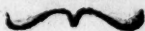
§ 19. In charging Debts of the Tes-
 tator which he paid, he must prove that
 they were lawful Debts; which may be
 done by shewing the Bonds or Special-
 ties, and proving them by one Witness;
 and

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and full and true Payment by another CHAP.
Witness.

XXXI.



§ 20. And the entire Expences he has been truly at in defending or prosecuting any Law-suit, on Account of the Testator, shall be allowed the Executor: but if he recovered Costs he shall be charged with them:

But he shall prove that the Suits were commenced by proper Witnesses; and what Sums thereon (above forty shillings) he expended.

§ 21. When Executors or Administrators are cited to Account; or if they be not cited, to avoid Disturbances they may call the next of Kin in particular, and all others in general, (that are any Ways interested in the Goods of the Testator) to appear on a certain Day to see a true and full Inventory of the Testator's Assets given in; and an Account of their Administration rendered, Witnesses produced, and so forth to definitive Sentence; with Intimation that if they do not appear, they will proceed in Penalty of their Contumacy.

Executors obtaining a *Plene Administravit*.

§ 22. And (they not appearing) Proceedings must be carried on (as before
in

C H A P. in matrimonial Causes) in Penalty of
XXXI. their Contumacy.

Sentence for it.

§ 23. And Sentence obtained this Way for a *Plené Administravit* will prevent many particular Suits for an Account; as each Person any Way concerned before this Sentence (notwithstanding Sentence in a former Suit where he was not cited) might sue; and will secure the Testimony of his Witnesses, if any of them be weak and infirm: For Proofs made and Acts done at the Instance of a Party cannot hurt absent Persons; for they may also sue unless generally cited as here laid down.

§ 24. Minors concerned cannot be prejudiced by this, but may call Executors to account: Though it is the Opinion of some that Minors above seven Years may be called to constitute a Proctor; and to pray that Guardians or Curators be assigned them; and that if they do not do so, all Acts in Pain of their Contumacy will be valid:

And it is also held, that the Judge from his Office may assign Minors within seven Years of Age, Guardians, and if he does, that the Acts done in their Presence are good. But *Quære?*

CHAP.

CHAP. XXXII.

Of appointing Guardians to Minors, and of Suits for Legacies.

SECT. I. **I**F a Legacy be left a Minor, under seven Years; the Father, or next of Kin to said Minor, may appear, and alledge that such a Will was made by such a Person; and such an one appointed Executor therein; and that such a Legacy was left his Son, who is under seven Years of Age.

§ 2. And that as he has not a Person in Law to sue, he implores the Office of the Judge, and prays that Guardians be assigned him to prosecute a Suit against such Executor: And the Judge shall assign him the said Father, or next of Kin, with one or two of the Proctors of the Court for Guardians.

§ 3. But if the Minor be above seven, he must appear personally, and
P alledge

Testamentary Causes.

C H A P. alledge as above; and pray that such
XXXII. and such Guardians be assigned him:

And upon his living at a great Distance from the Court, or upon other Reasons, the Judge may grant a Commission for that Purpose:

Or the Minor may constitute a special Proctor to pray that Guardians be assigned him.

Cause described.

§ 4. When Guardians are appointed, they may in Consequence of that issue Citation against the Executor; and in the Beginning of the Libel the Cause is to be described in this Manner:

In the Name of God, *Amen*, Before you *A. B. &c.* The Party of *J. C.* a Minor, and Legatary in the Last Will and Testament of *C. D.* suing by *E. F.* his Guardian by this Court lawfully constituted, against *G. K. &c.*

§ 5. And a particular Article is to be inserted in the Libel, declaring that *E. F.* was lawfully assigned and made Guardian: And if he was constituted Guardian by Commissioners appointed for that Purpose, he should, before Conclusion in the Cause, exhibit the
Com-

Testamentary Causes.

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Commission and Affignation of him as Guardian : C H A P.
XXXII.

And formerly the Suit was instituted in the Name of the Guardians.

§ 6. The Proctor, as he is to answer for what Costs are to be given against the Minor, if he be cast in the Cause, should take care to get sufficient Security to indemnify himself. Proctor to indemnify himself.

§ 7. If the Executor pays the Legacy, although the Guardian never pays the Minor, he is not to be troubled by the Minor any more ; because he paid it to the Person appointed by the Court to sue for, and to recover it ; and the Judge should take sufficient caution from the Guardian before he appoints him such.

§ 8. And the safest Way would be for the Executor (after he appears upon the Citation) to deposit the Legacy in Court : And the Judge (before he gives it to the Guardian) should get Security from him that he will deliver it to the Minor when of Age. Legacy deposited in Court.

§ 9. If two or three Executors have been appointed to a Will, and they all One out of many Executors cited declining to answer.
P 2 proved,

CHAP.
XXXII.

proved, and took the Execution of it upon them; then any one cited singly may except against answering, or defending the Cause, until they are all cited: This should be done before Contestation, otherwise he takes the Defence of the Cause upon himself.

§ 10. If any of them die, the Survivor or Survivors are to be sued; and if they all die, the Executor of the last Survivor, and Legacies left by the first Testator (where there are Assets of such Testator) shall be paid before those left by the last.

Legacy left by
a Will suppressed.
fed.

§ 11. If a Will be suppressed, and Administration granted to the next of Kin; any Person that has a Legacy left him by that Will may sue the Administrator; and, libel that the Deceased made a Will; that Administration of his Effects was granted to the Impugnant, whereby he became possessed of all his Assets;

And if he proves it (although the Will was never exhibited or proved before any Judge) he shall obtain.

Distribution
among Lega-
tees.

§ 12. The Debts, Funeral, and other Expences of the Deceased being paid;

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paid; if Effects sufficient to pay the Legacies do not remain, a Distribution is to be made among the Legatees in Proportion to their Legacies: CHAP. XXXII.

And Legacies in Kind are to be paid (if they remain after Debts) without any Respect to Legacies in general.

§ 13. If Suit be instituted for a large Legacy in general, and Sentence be given for it, without the Intervention of any of the Legatees in general; and it be paid: The other Legatees cannot compel the Executor to pay them, or to make any Distribution. But *Quære?*

§ 14. In Causes of Legacies the same Offers may be made as in Causes of Tithes*. For an Executor sued for a Legacy of an hundred Pounds (having but ten after the Debts and Demands are paid) may offer that Sum; and alledge that he has no more, and that he has fully administered: If this be proved, and the Promovent refuses it; he shall be condemned in Costs. Offers in Legacies.

§ 15. If a Legacy in Kind be sued for, he shall alledge (if he can pay it in Kind, Legacies in Kind.
P. 3. m.)

* See Chap. 23.

C H A P. Kind, and it remains with him) that
XXXII. he is ready to deliver it in any indiffer-
 ent Place, to be appointed by the Judge :
 But if it be destroyed, he should offer
 the Value.

If he has altered, or destroyed Lega-
 cies in Kind, he may be punished cano-
 nically for Violation of his Oath : Be-
 cause such Legacies should be paid in
 Kind.

§ 16. If a Testator has bound himself
 in any Sum to be paid after his Death,
 and that Sum be not paid ; the Execu-
 tor sued may offer the Legacy upon this
 Condition, that the Legatee give him
 proper Caution to indemnify him from
 such Demand ; and that (if he is obliged
 to pay it) he will refund a ratable Pro-
 portion of such Legacy.

§ 17. And if the Legatee denies such
 Bond or Sum to be due, the Executor
 must prove it : And he may then depo-
 sit it with the Register under the Con-
 ditions aforesaid.

§ 18. If an Executor has only Bonds
 for desperate Debts, or sure Money, he
 may alledge (in order to prevent an ex-
 pensive Suit) that he will give up such
 Bonds

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Bonds or Debts to the Legatee suing him; and give a proper Authority to him for recovering them: And if they are refused, and it cannot be proved that he had any other Assets; he shall be dismissed with his Costs expended since the Time the Offer was made.

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XXXII.

§ 19. But it is otherwise, if it be proved that he had any Assets at all, besides such Bonds or Obligations:

And if any Assets remain besides, he should supply the Expences attending the Recovery of such Debts; or Protest, when the Offer is made, that he has nothing to do so.

§ 20. If there are not Goods sufficient to pay the Legacy sued for; the Executor shall alledge before Conclusion that he has fully administered, and that there are not left Assets enough to pay the Legacy.

*Plene Admini-
stravit alledg-
ed before Con-
clusion.*

§ 21. And he shall bring in an Account of his Administration, and exhibit a true Copy of the Inventory before given in by him; and shall prove it from the Confession of the Adversary's Proctor; or by Witnesses who saw it drawn, and attested by the Register of

CHAP. the Court; or by a Scrutiny to have it
 XXXII. compared with the original: otherwise
 he shall be obliged to prove what Effects
 came to his Hands by proper Witnesses.

§ 22. But the modern Practice is to exhibit a Copy of the Inventory before exhibited, with an Addition of what Goods came to his Hands, since it was exhibited upon the Oath of the Party: And if it appears that there was not sufficient to pay off the Legacies; it lies upon the Adversary to prove that he received more Goods.

*Plene Admini-
 stravit after
 Sentence.*

§ 23. An Executor may plead *Plene Administravit* after Sentence is given to prevent Execution: But then he may be condemned in the Costs expended 'till that Time, and he must pay them before he is heard.

§ 24. Unless he was condemned in a Debt of the Testator in the secular Court; not known to him, before Sentence passed; which leaves him not wherewithal to pay the Legacy adjudged: And if he proves it, he shall not pay the Costs.

§ 25.

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§ 25. But if it be proved that he knew of this Debt, he shall be condemned in the Costs; his alledging that he did not know of this till after Conclusion; and his own Oath to it (if uncontroverted) will be sufficient.

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XXXII.

§ 26. If an Executor pleads *Plene Administavit* in the Beginning of a Suit for a Legacy, and shall exhibit his Inventory, and Account; and the Legatee compels him to justify and prove it; if he does prove it, such Legatee shall be condemned in Costs.

§ 27. Because he had or might have had Time sufficient to search out the Truth, by enquiring of the Creditors mentioned in the Account; but if he does not compel the Executor to prove it, he shall pay no Costs.

The End of the Testamentary Causes:

CHAP.

C H A P. XXXIII.

Of Defamatory Causes.

Mix'd Causes
and Plenary.

SECT. 1. **C**Auses of Defamation are mix'd Causes, that is, partly Criminal, and partly Civil: And they are also Plenary; but by a Statute in Force in this Kingdom, the Judge at the Motion of either Party may proceed in a summary Way *.

Suit instituted
within a Year.

§ 2. Suit should be instituted for Defamatory Words within a Year after they were spoken, otherwise no Action will lie, particularly, if within that Time the Parties behaved familiarly together.

§ 3. And this Exception of a Year's lapsing since the Words were spoken should be made before Conclusion in the Cause, although it is held that it may be made after Conclusion at the Time

* 6 George I. c. 6.

Defamatory Causes.

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Time of Information: And it is proved by referring to the Libel, and the Proofs in the Cause. C H A P.
XXXIII,

§ 4. But this Exception will not hold, if the Party had no Knowledge of the Words, by his being out of the Kingdom, or in some Part of it, remote from the Place where the Words were spoken: And that he makes this appear. Exception will
not hold where
there was no
Knowledge of
the Words.

§ 5. As there is a Constitution in *Lyndwood*, whereby all are excommunicated *ipso facto*, who maliciously defame any one, so that he is injured in Character among serious and good Men; and so that Canonical Purgation might be enjoined him. Defamers ex-
communi-
cated *ipso facto*.

§ 6. Although a Year has lapsed since the Words were spoken; yet he may be convened by the Promovent's alledging this Constitution, and that by it Sentence of Excommunication is pronounced upon the Impugnant; and the Promovent should pray that it be pronounced that the Impugnant has fallen into such Sentence.

§ 7. For Sentence of Excommunication affects the Party from the Time the

Defamatory Causes.

C H A P. the Words were spoken; and Sentence
XXXIII. pronounced by the Judge is only declaratory of the Fact.

Office promoted.

§ 8. But as in all other Causes, in which Sentence of Excommunication is pronounced by Law upon any Person. The Party Agent does not institute a Suit in his own Name directly, but promotes the Office of the Judge; so the properest Way would be in this Case, to carry on the Suit at the Promotion of the Party injured.

Defamatory Libel.

§ 9. When Suit is for a Defamatory Libel written and published against any one, a particular Article (besides the general one) is to be added, that the Impugnant wrote and published, or procured to be written, and published a certain infamous and Defamatory Libel containing such and such Defamatory Words, and here the Words are to be inserted in the Libel:

Or, if the Promover has a true Copy of it, he may annex it to the Libel; and in this Case (if it be proved) the Punishment should be greater, than if the Words were only spoken.

For Sentence of Excommunication affects the Party from the Time the

Defamatory Causes.

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XXXIII.

Exceptions
containing Spi-
ritual Crimes.

§ 10. If Exceptions containing spiritual Crimes, or such Defamatory Words as will bear an Action in the Spiritual Court, be given in against Witnesses in this or any other Spiritual Cause; if any such Crimes be not proved, the Party injured may sue the Party propounding such Exceptions in a Cause of Defamation; notwithstanding such Party protested at the Time they were given in, that he gave them only for his Defence, not with an Intention to defame such Witness.

§ 11. And here the following Articles are to be inserted in the Libel, That the Promovent was produced as a Witness on such a Day, in such a Year, in such a Cause between such and such Persons in this Court, (or if not in this Court, the proper Court is to be specified) and that he was sworn and examined, as may appear from the Acts of the Court.

Articles to be
inserted in the
Libel.

§ 12. And that the Impugnant (the Party against whom he was produced) exhibited Exceptions, or rather a Defamatory Libel against him; in one of the Positions of which the following Words were

C H A P.

XXXIII.



Original Ex-
ceptions exhi-
bited.

were contained, (here the Words to be specified) and that the Impugnant failed in Proof of such Exceptions, &c.

§ 13. And in this Cause the Witness's Proctor, when Probatory Terms are assigned, shall exhibit the Act; and the original Exceptions judicially given in the Cause alledged, and at the Time before specified, by referring himself to the Acts and the Register of the Court.

Exceptions
proved.

§ 14. And the Impugnant if he proved his Exceptions shall alledge that he did so; and shall prove it by exhibiting the Acts and Depositions of the Witnesses produced on such Exceptions:

And although he did not prove them in the first Instance, he may prove them in the second.

§ 15. If the Exceptions were not exhibited in the same Court, then the Acts and Exceptions aforesaid are to be exhibited under the Hand of the Register of the Judge before whom they were exhibited, or by some publick Instrument under Seal of the Judge, and signed by the Register:

And if it be denied that such Exceptions were given, it must be proved by
the

Defamatory Causes.

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the Register of the Court in which they were exhibited, or by a Scrutiny.

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XXXIII.

§ 16. A Proctor giving such Exceptions in the Name of his Client is to be sued personally; so that he should be cautious how he gives in such Exceptions:

Proctor to be cautious in giving Exceptions.

§ 17. And it is a Doubt whether the Exceptions proved in the Absence of the Witness be sufficient to defend the Excipient, or whether such Proof be good?

However the Party may except against the Witnesses proving the Exceptions, and invalidate their Testimony, whether they were before excepted against, or not, by the Party they were originally produced against.

§ 18. If the Promovent also defamed the Impugnant, he may be reconvened in the same Cause by the Impugnant, (who although no Citation preceded; for here there is no Necessity for one) may give in his Libel against him.

Impugnant reconvened.

§ 19. And they must proceed together in Contestation of Suit, and praying the same probatory Term, &c. And if

CHAP. XXXIII. if both are proved Defamers, there must be a Compensation of Penance and Costs; That is, no Penance or Costs shall be inflicted on either: Yet the Judge at Discretion may punish them from his meer Office.

Sentence.

§ 20. Sentences in this are executed as in other Causes; and now in the very Sentence it is to be decreed that Penance be effectually enjoined the Impugnant; and after in Presence of the Party or his Proctor, the Manner of performing the Penance directed by the Judge is inserted in the Acts of Court; and a Schedule of it to be conceived by the Register.

Penance.

§ 21. And if the Party be present, he is to be admonished personally; if not a Monition goes against him to extract such Schedule of Penance; and to perform it; and to certify the Performance of it by such a Day certain.

§ 22. And also to pay the Costs taxed, within a certain Time appointed, after the Monition is served upon him; under Penalty of Excommunication from that Time pronounced upon him in Default, &c.

§ 23.

Defamatory Causes.

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XXXIII.

§ 23. And the Penance should be adequate to the Crime, and the Condition of the injured Party; and in a publick Place, or in the Parish-Church of the Party, if the Words were spoken publickly; and the Performance of it is to be certified by the Minister and the Persons present.

Adequate to
the Crime.

Here the Criminal is not to be covered with a white Sheet, as for the greater Crimes those of Adultery, &c.

And the same Method is to be observed in enjoining and exacting Penance in criminal Causes.

The End of the Defamatory Causes.

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CHAP.

C H A P. XXXIV.

*Of Provoking from, and refusing
the Judge.*

SECT. I. **I**F in any Causes of Correction, either at the meer Office, or where the Office of the Judge is promoted; or in a Cause concerning the Title of a Clerk to his Benefice: The Party suspects the Judge before whom he is to be convened of Partiality, or Want of Integrity; because he is his Enemy, or a Kinsman to his Antagonist; or because some Disputes subsist between him and the Judge, or for other Reasons.

Provoking to a
Superior
Judge.

§ 2. In such Case he may provoke from him to a Superior Judge; as from the Archdeacon to the Ordinary; or from him to the Archbishop of the Province; and submit his State, Reputation and Substance to the Tuition and Protection of that superior Judge.

§ 3.

and Recusations.

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XXXIV.

§ 3. And the Party provoking should particularly specify the Reasons and Causes of his Provocation; as in Appeals from Grievances, the Grievances must be specified :

To specify the Reasons, and intimate the Provocation.

And before he is cited to appear should intimate such Provocation to the Judge; otherwise it is of no Force.

§ 4. And after the Judge is acquainted with the Provocation, he is to stop Proceedings, otherwise all Acts done are null, and of no Efficacy.

§ 5. And for the greater Security, the Party may apply to the Superior Judge to intimate to the Inferior, that he has admitted the Provocation; and pray that Citation and Inhibition be decreed against the Judge provoked from.

§ 6. It is doubted by some whether the Party can provoke after Citation be decreed against him; or he be cited by publick Edict?

§ 7. And it is held by others, that if Citation was decreed in his Absence, but not personally served before he provoked to a superior Judge, and before

Q 2

such

CHAP. such Judge admitted his Provocation;
 XXXIV. and if he be cited to appear before he in-
 timated it to the Judge he provoked
 from; on the Day he appears he may
 intimate such Provocation, and it is
 valid.

Prosecuting
 Provocation.

§ 8. The Judge may appear person-
 ally, or by his Proctor, and obtain a
 Decree for the Party to prosecute such
 Provocation: And if he does not prose-
 cute it, and shew sufficient Reasons for
 provoking before the Judge to whom he
 provoked; he is to be condemned in the
 Costs, and remitted to the Judge he
 provoked from.

§ 9. But if he justifies his Provoca-
 tion, and shews sufficient Causes for it;
 the Judge compelling him to it, is to
 be condemned in Costs: And it is to
 be pronounced that he justly provoked,
 and that such Judge is not a competent,
 or an indifferent Judge to him.

Recusation of
 a Judge.

§ 10. A Person convened before a
 Judge suspected by him, may give a
 Recusation in Writing, containing the
 Causes of his refusing the Judge, and
 referring such Causes to Arbiters.

§ 11.

and Recusations.

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XXXIV.

§ 11. And two or three shall be named Arbiters on both Sides, upon whose Judgment and Report the Recusation shall be confirmed or annulled : And if the Judge proceeds without having Arbiters appointed on both Sides, and waiting their Decision, all is null, and there is a just Cause of Appeal.

Arbiters of the
Recusation.

§ 12. But *Quære*, whether the Arbiters so appointed become by Law Judges of the Recusation? or whether the Judge refused, or his Superior, shall give them their Authority to determine upon the Recusation?

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CHAP.

C H A P. XXXV.

*Of obtaining a Double Quarrel
instead of Appealing.*

SECT. I. **I**F a Judge delays to prove a Will, or to give Administration to the next of Kin; or to revoke an Administration given contrary to Law; or if he refuses and delays to give Sentence after Conclusion and Information in the Cause; or to admit a conclusive Matter, or Allegation; and puts it off several Times under Pretence of hearing his Pleasure, and taking Time to deliberate upon it:

Double Quarrel instead of Appeal.

§ 2. In these Cases or the like, the Party injured may proceed against him (after he has been three Court-days successively prayed to do his Duty) before a Superior Judge by Way of Double Quarrel.

Rescript.

§ 3. And the Judge before whom the Complaint is made, shall send a Rescript to the Inferior Judge, directing him

Of Double Quarrels.

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him to pronounce Sentence, admit such Allegation, or to grant such Administration (as the Case is) within a certain Time; or to appear on such a Day after to shew Cause, &c. why the Right of Proceeding in such Cause, on Account of his Negligence, should not devolve to the Judge granting the Rescript: C H A P.
XXXV.

And you are to proceed then as in Double Quarrels *.

§ 4. And the Jurisdiction of the Judge of the Quarrel being pronounced for; and that they proceed according to the Form and Tenor of what passed, and was acted in the Cause; a Monition is to be issued for transmitting the Proceedings; and a Citation against the Adversary to appear to see further Proceedings in the Cause, &c. Monition for transmitting the Proceedings.

§ 5. And if the Judge complained of, or Register will not transmit the Proceedings they are to be excommunicated: And to cut off all Delay that might attend excommunicating the Adversary, if he will not appear; an Intimation should be inserted in the Citation against him, that if he does not appear Intimation against the Adversary.

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pear

• See Chap. 19.

C H A P. pear, the Judge will proceed in the
XXXV. Cause in Penalty of his Contumacy.

§ 6. And this Method of Proceed-
 ing by Complaint may probably prove
 the less expensive: For the Proceedings
 need not be transmitted, if the Judge
 complained of acts agreeably to the Re-
 script.

C H A P. XXXVI.

Of Appeals from Grievances.

SECT. I. **T**HE Order of Appeals is this, first from the Order of Appeals.

Archdeacon to the Ordinary of the Diocese; from him to the Archbishop of the Province, and from him to the King in Chancery, who shall appoint Delegates to hear and determine the Appeal; and because the Statute taking away the Pope's Power conferred all that he had upon the King, he may now grant a Commission *ad Revidendum*, as the Pope used the same Priviledge.

§ 2. Appeals are two-fold, either Appeals two-fold. from Grievances, or from Definitive Sentences; Grievances arise in the Cause before Definitive Sentences, as from rejecting Witnesses to be by Law admitted; or a defensive Matter; or a conclusive Allegation; or admitting those not to be admitted; or the like.

CHAP XXXVI. § 3. In Appeals from Grievances, the Grievances you appeal from are to be expressly and particularly specified: Grievances to be specified. For it is not sufficient to say that the Party produced such Witnesses, which the Judge refused to admit; or gave such conclusive Matter which the Judge rejected; but the Names of the Witnesses, &c. and the Contents of the Matter rejected are to be inserted in the Appeal: And so in the like Appeals.

To be made in Writing. § 4. And all Appeals from Grievances ought to be made in Writing (as they may be more fully and plainly expressed that Way, than if made at the Acts) and interposed within ten Days after Sentence before the Judge, who pronounced the Sentence, if he can be come at; if not before a Notary Publick, and proper Witnesses.

And interposed within ten Days. § 5. For it is doubted by some whether the Statute that allows fifteen Days for Appealing takes Place here? or only in Appeals from definitive Sentences, or such Grievances, or Decrees that have the Force of Definitive Sentences? and the Time for appealing by the Civil Law is ten Days:

But

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But this Doubt seems not to be well grounded.

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§ 6. In Appeals for rejecting an Allegation or Defensive Matter, it is not sufficient particularly to specify the Contents of it; but the Contents must be proved by the Appellant, otherwise he will fail in the Cause.

In Appeals
contents of
Allegations re-
jected to be
proved.

§ 7. For it is to be presumed in Favour of the Judge from whom, that Matter was propounded to give Delay, and that the Party could not prove the Contents of it.

§ 8. But if at the Time he offered such Matter, he alledges and swears that he does not offer it to give Delay, but that he believes he can prove it; and that he is now prepared, and has his Witnesses ready to prove it: Although the Appellant does not prove it in the Appeal, yet notwithstanding he shall obtain.

§ 9. If in the Matter rejected there are any Articles not to be admitted by Law, such as are foreign to the Cause, or were before propounded; on which Witnesses were produced, sworn and examined;

The Case
when there are
in Allegations
Positions not
to be admitted
by Law.

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examined; Publication of their Depositions made, and those known and learned by the Adversary; or such as are contrary to those before propounded: And although you prove them; yet the Judge of the Appeal should not admit those, but the other Articles pertinent to the Cause:

And the Appellant here is to be condemned in the Costs, or at least should get but moderate Costs from his Adversary.

§ 10. For in doubtful Matters the Judge is to be favoured: And it is to be presumed that the Judge from whom rejected such Allegation on Account of those unlawful Articles; or that he rejected only those Articles that were not to be admitted.

§ 11. But this is a Question, because the Appellat by praying that the whole Allegation be rejected, nor assenting that the legal Positions be admitted seems to be in *Malâ Fide*;

And Proctors (for the greater Security) should not insert such Positions, or those they have any Doubt or Suspicion of in the Allegation or Appeal.

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§ 12. Every Person unjustly excommunicated from a false Certificate, may object against it before the Judge excommunicating him; or may appeal to the Superior Judge: And if he justifies his Appeal, and proves the Certificate to be false, the Adversary shall be condemned in the whole Costs of the Appeal, and unjust Excommunication: And the principal Cause shall be prosecuted before the Judge of the Appeal.

Appeal from
unjust Excommunication.

§ 13. And it is the safest Way to proceed thus by Appeal; if the Judge from whom be in any Respect suspected by the Party Appellant.

§ 14. After Conclusion and Information in the Cause before the Archbishop or his Commissary; if they delay to pronounce Sentence, although a Term to hear Sentence was often assigned: The Party aggrieved may appeal to the Delegates: but they cannot be applied to by Way of Complaint or Double Quarrel.

Delegates not
to be applied
to by Way of
double Quarrel.

§ 15. In Appeals from immoderate Taxations, the Appellant should particularly declare; and deduct the Excess
he

Appeals from
immoderate
Taxations.

C H A P. he complains of from the Costs taxed
XXXVI. against him; and in his Appeal specify
 the Costs which by Law should be allocated; and besides, the whole Schedule of Costs taxed against him should be mentioned in the Appeal: For in it are contained as well the just as excessive Costs.

§ 16. And as it would be too prolix to insert both Schedules, that is, the Schedule of Costs taxed by the Judge from whom; and the Schedule of legal Costs which he should tax, in the Appeal and Inhibition; it would be less inconvenient to annex them to the Appeal, in such Words as these, as appears from the Schedules hereunto annexed, which the aforesaid Party or Proctor wills and prays to be accounted as here read and inserted.

And a Schedule of the Excess in the Costs should be annexed in the same Manner; or the Excess particularly specified in the Appeal.

**Excessive Costs
 for expediting
 a Commission
 proved.**

§ 17. If excessive Costs be allocated for expediting a Commission; the Notary Publick assumed to expedite such Commission should be produced to prove the Excess.

§ 18.

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§ 18. If an excessive Sum be taxed as given to Commissioners for their Trouble, or to Witnesses for their *Via-tica*; and other Expences attending Witnesses and Commissioners, as for their Diet and the like; the Commissioners and Witnesses, as well as the Persons in whose Houses they were entertained, should be produced and examined.

§ 19. If a greater Sum be taxed for the Examination of Witnesses, Copies of their Depositions or Proctor's Fees and the like, than from the Stile of the Court or the Table of Fees is due: The Stile of the Court, or the Table of Fees, and the Sums due by such Stile or Table are to be alledged and proved by the Appellant.

For Examination of Witnesses.

§ 20. If Costs be demanded for the Examination of more Witnesses, and their Depositions than were examined; or for the Fees of Advocate and Proctor for any Time before Suit was commenced; or during the Time that the Cause was under Compromise; the Excess in this Case may be proved by the Acts

For Fees of Advocate and Proctor.

§ 21.

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§ 21. And if Excess in any of the above Cases be proved; the Appellant shall obtain; and the Appellat shall be condemned in the Costs of the Appeal: But the Judge to whom may allocate and tax his just Costs for the Appellat; and may compel the Appellant to pay them.

Appeal from
Definitive Sen-
tence as well
as Taxation.

§ 22. If the Appeal was as well from Definitive Sentence, as from the Taxation of the Costs, and the Judge proceeding in both Causes reverses the Sentence of the Judge from whom, as to the principal Cause: The Appellat shall not obtain Costs, but shall be condemned in the Costs of the first Instance to the Appellant.

In Appeals in
Causes of Cor-
rection volun-
tary Promoter
made a Party.

§ 23. In all Appeals from Grievances, or from Sentence in Causes of Correction, on Account of the Reverence and Respect due to the Judge; he is not (no more than in Appeals in other Causes) made a Party in the Appeal; but only the voluntary Promoter of his Office.

The Judge
whom.

§ 24. But when the Proceedings are transmitted, if it does not appear, that the Grievances were committed at the Instance

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Instance of the Party, but from the CHAP.
 meer Office of the Judge : The Appel- XXXVI.
 lant may (after Contestation of Suit with
 the Appellat) pray Citation against the
 Judge from whom ; and (he appearing)
 give in a new Libel, exhibit the Pro-
 ceedings, and proceed to Sentence.

§ 25. And if the Judge does not justify his Proceedings, Sentence is to be pronounced for absolving the Appellant; and the Judge from whom to be condemned in the Costs: But if he justifies his Proceedings; the Cause is to be remitted to him, and the Appellant to be condemned in the Costs.

§ 26. But although the Grievance does not appear to be inflicted at the Instance of the Appellat, from the Proceedings transmitted; yet the Appellant may prove that the Appellat promoted the Office of the Judge from whom, and instigated him to inflict the Grievance: And if he does; he shall obtain Sentence against both.

§ 27. In Appeals from Grievances Causes of
 you proceed in the same Manner, as in Grievance of
 Appeals from Definitive Sentences; for the Nature of
 a Cause of Grievance follows the Nature the Principal
 Cause.

R

of

C H A P. of the Principal Cause; for if the Principal Cause be plenary, so must the Cause of Appeal be:

§ 28. But in Appeals from Grievances you cannot alledge Matters not alledged before, nor prove Matters not proved before; as in Appeals from Definitive Sentence it is held you may.

Grievances to
be proved
from the Acts
of the Judge
from whom

§ 29. For the Grievances are to be justified from the Acts of the Judge from whom, unless they have been omitted out of the Proceedings; or unless the Register would not inscribe among the Acts the Petition of the Appellant, as if he should pray that such and such a Matter be admitted: Or unless the Appeal be from Threats of the Judge judicially spoken.

Cases where
they cannot.

§ 30. Or unless it does not appear from the Acts, that the Appellant, in a Cause of Correction, solicited the Judge to proceed, or promoted his Office.

§ 31. And in this Case to avoid Expences it is thought by some to be the most prudent Way immediately to cite the Judge from whom; and to make him a Party; for otherwise if you cannot

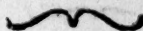
Appeals.

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not directly prove that the Appellat promoted the Office of the Judge; he shall be dismissed with his Costs.

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§ 32. For it seems equitable that the Judge be made a Party, for he should not commit Injustice; and although an unjust Thing be petitioned for, yet he should decree what is right: And if the Appellant proves his Intention he shall obtain Sentence with his Costs.

Judge if, and
when to be
a Party.

§ 33. But it is doubted whether the Judge in Cases of voluntary Promotion is to be made a Party in the Appeal; But where he proceeds from his meer Office, it is held that he and his necessary Promoter are to be made Parties, and the Appeal prosecuted against both? But *Quære*, whether this would not intimidate the Judge from doing his Duty? And therefore, whether it be legal?

§ 34. If the Appellant has justified the Appeal, the Appellat (if he was Promovent in the first Instance) is obliged to prosecute the principal Cause before the Judge to whom: Otherwise the Appellant shall be dismissed from the principal Cause with his Costs.

Upon Appeals
from Griev-
ances being
justified to pro-
ceed in the
principal
Cause.

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§ 35. If the Appellat thinks that the Appellant justly appealed to prevent Delay and Expence he should confess the Grievance ; consent that they proceed in the principal Cause, and offer the Costs already expended : For the Appellant is not obliged to proceed, unless his Costs upon that Cause of Grievance be paid.

The Appellant when to consent to the Judge, and to proceed in the Principal Cause.

§ 36. And when the Costs are paid, the Appellant is to proceed : 'And if the Appellat was Promovent in the first Instance, he may proceed, although it be against the Consent of the Appellant, because the Appellant consented to the Judge.

§ 37. If in a Matrimonial Cause the Impugnant conscious of the Contract alledged, and knowing that his Adversary can prove it, to load him with Expences, and to keep off Sentence as long as he can, appeals from a Grievance, when perhaps none was inflicted.

§ 38. Or, if in a Cause of Substraction of a Legacy the Impugnant does the same, when perhaps it is a large and valuable Legacy, and even with the Interest accruing from it, he may defray the Expences of the Suit.

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§ 39. In such Cases the Appellat (as soon as the Inhibition is returned) may consent to the Judge, and proceed in the principal Cause : And the Appellant shall be compelled to proceed likewise. XXXVI.

§ 40. But the Appellant may (if he thinks he had a just Cause for appealing) proceed in the Appeal from the Grievance, and if he justifies his Appeal, and proves the Grievance; he shall obtain Sentence in said Cause with his Costs: But if he fails, he shall be condemned in Costs to his Adversary. Cause of Grievance may be prosecuted.

§ 41. Or the Appellat (if he is advised that the Appellant had no Cause for appealing) may compel him to proceed in that Cause; and if he will not proceed, he shall be condemned in the Costs made in the Cause of Appeal from the Grievance.

R 3

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Of Appeals from Definitive Sentence.

Action against
Proctor for not
appealing.

SECT. I. **T**HE Proctor should appeal from Definitive Sentence, unless his Client signify the contrary to him : For if he does not an Action will lie for his Client against him.

§ 2. At the Time Sentence is pronounced, the Proctor against whom it is pronounced may appeal *Vivâ Voce* at the Acts, saying that he dissents to the pronouncing such Sentence, and protests against the Nullity of the same.

Appeal *Vivâ Voce*.

§ 3. And that he appeals from it as null, invalid, and unjust to the Archbishop, or the King in Chancery, according to the Nature of the Court in which the Cause was prosecuted ; and prays that Apostles be given, and delivered with Effect to him and his Client, and that, three Times severally and most earnestly ; and that he principally com-

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complains of the Nullity of said Sentence; and requires the Register to form a publick Instrument upon his Appeal then interposed, and the Witnesses there present to give their Testimony thereto.

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§ 4. The Names of the Witnesses present upon pronouncing any Sentence should be written by the Register among the Acts: and at the Time of appealing Apostles must be prayed, otherwise the Appeal is null.

Names of Persons present upon pronouncing Sentences to be taken down.

§ 5. Apostles are dimissory Letters sent by the Judge from whom, to the Judge to whom the Appeal was made; and instead of Apostles the Acts and the whole Proceedings in the Cause are sent.

Apostles.

§ 6. If Sentence be pronounced in a Matrimonial Cause against the Promovent, so that the Impugnant is freed from his Suit, and may immediately marry elsewhere: Or if Suit be between two Clerks for Institution to the same Living, and Sentence be given for one, who may get himself instituted within the Time indulged by Law to appeal: Or if a Will is contested, and Sentence be pronounced for it; or if

Cases wherein to appeal immediately.

C H A P. Suit be for an Administration, and it be
XXXVII. committed to one of the Litigants:

~~~~~ The Executor or Administrator may within the Time for appealing possess himself of the Goods of the Deceased, and alienate them, and release his Debts.

§ 7. In any of these Cases the Party should appeal immediately, when Sentence is pronounced at the Acts: And then nothing can lawfully be done to his Disadvantage by his Adversary.

§ 8. For Persons solemnizing Marriage after that, may be sequestered, and punished by the Judge of the Appeal for Contempt: And the Institution then of a Clerk, knowing the Appeal, is to be revoked; and the Appellant possessing Goods of the Testator may keep them: And Debtors of the Deceased cannot be sued; but may use the Benefit of the Appeal.

By Appeal  
Sentence suspended.

§ 9. For by the Appeal the whole Effect and Force of the Sentence is suspended, until the Appeal be finished: And where there is an Appeal at the Acts immediately, the Adversary cannot pretend Ignorance of it.

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§ 10. At the Time the Appeal is interposed, and Apostles are prayed, the Judge assigns him instead of Apostles the whole Proceedings: And at the Petition of the Adversary shall assign him certain competent Terms to prosecute the Appeal, which are usually a Month, and to certify the Prosecution of it.

Whole Proceedings assigned instead of Apostles.

And nothing during such Terms shall be attempted, or done to the Prejudice of the Appellant.

Terms to certify Prosecution.

§ 11. If any one has appealed at the Acts, and prayed Apostles to be given him, and the Judge has assigned the Term of the Law to receive such Apostles; the Appellant should within thirty Days (to be reckoned from the very Time Sentence was pronounced to the very Time Apostles are to be desired) go to the Place of Judgment; and if he can see the Judge, pray three Times severally and most earnestly that Apostles be assigned, and delivered to him: And if the Judge refuses to give and will not assign Apostles, there is a just Cause of Appeal.

Term of Law to receive Apostles.

§ 12. And if the Judge be not present, and the Appellant cannot see him;

C H A P. him ; he should protest before a Notary Publick and Witnesses that (if he was present) he is ready to pray Apostles from said Judge.

And he should then pray Apostles before the Notary Publick, and the Witnesses, and require a publick Instrument to be made on the same, and the Witnesses then present to testify it.

And if Apostles are not prayed in the Manner aforesaid ; the Appellant (though he had a just Cause of Appeal) shall be cast in the Cause.

Instrument upon praying Apostles to be exhibited.

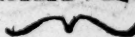
§ 13. And as to found the Jurisdiction of the Judge of the Appeal, the Appellant should before Conclusion in the Cause exhibit the Instrument of Appeal : So in this Case he should exhibit the Instrument upon his praying Apostles, and his Protestation aforesaid ; otherwise he shall fail in the Cause.

Appeal from Denial of Apostles, or Assignment of Refutatory ones.

§ 14. If the Judge on the thirtieth Day after Sentence is pronounced (as in the Case before) shall assign you refutatory Apostles ; that is, Letters containing Reasons why he refuses you Apostles : or shall decree nothing upon your Petition for Apostles : Although you appealed from Definitive Sentence ;

## Appeals.

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tence ; yet to obtain Sentence in your C H A P.  
 Appeal, you must appeal from such XXXVII.  
 Denial, or Assignment of refutatory   
 Apostles.

§ 15. And you can prosecute both Appeals together ; and if you do not obtain in both, you may in one, that is, in the Appeal from denying you Apostles : But you cannot obtain in the Appeal from Sentence, without appealing from such Denial.

§ 16. If the Party against whom Sentence is pronounced is afraid to appeal immediately at the Acts ; least the Judge offended should assign him too short a Time for prosecuting the Appeal, and certifying the Prosecution of it : Or in a Cause of Tithes, lest he should immediately execute the Sentence with Regard to the Costs \* ; or if he delays to have Time to acquaint his Client with the Sentence passed against him ; he should at the Time Sentence is pronounced dissent to it as null and invalid, and protest to appeal within the Time allowed by Law.

Cases where it is convenient not to appeal immediately.

§ 17. Or if it makes for his Party in any Degree, as absolving him from the Sentence making for his Party to be accepted so far.  
Costs,

\* See Chap. 23. Sect. 19.



**C H A P.** Costs, or Condemning the Party obtaining Sentence in the Costs; he should accept it, as far as it makes for his Party: And as far as it makes against him, dissent and protest against it's Nullity, and to appeal.

Appeal before  
a Notary Publick.

§ 18. And afterwards he may appeal within the proper Time before a Notary Publick in Writing; which Appeal the Proctor usually exhibits afterwards before the Judge from whom, and prays Apostles:

Time for appealing.

§ 19. The Time for appealing lapses only from the Time the Party knew Sentence passed; for if Sentence passed in his Absence (he not being monished to attend) \* he may appeal fifteen Days after he knew it; or complain of it's Nullity to the same Judge who pronounced it, or to a Superior.

Appeals from Interlocutories best in Writing.

§ 20. You may appeal at the Acts *Vivâ Voce* from an Interlocutory, having the Force of a Definitive Sentence, or in Writing; which last is the best Way, because you can more fully and plainly declare the Fact, and specify the Grievance.

§ 21.

\* See Chap. 15. Sect. 3.

§ 21. And a Person moderately skilled in Practice may draw a Libel from an Appeal in Writing: For a Libel in an Appeal from Grievances should be conformable to the Inhibition, and the Inhibition to the Appeal, for in it is contained the Tenor and Effect of the Appeal.

§ 22. In an Appeal in Writing from Definitive Sentence, if Sentence passed against the Promovent; the Appellant should declare in the Appeal, that such a Judge in such a Cause between such and such Persons, read and promulged a pretended and Definitive Sentence against *A.* the Promovent in said Cause, in Favour of *B.* the Impugnant; whereby the said *B.* was dismissed from the Suit of *A.* and *A.* condemned in the Costs made, and to be made on the Part of *B.*: And that the Judge aforesaid pronounced such Sentence, notwithstanding the said *A.* had proved his Libel.

§ 23. And if the Sentence is against the Impugnant, he should specify the Cause, and the Judge as above: And should declare that the said Judge condemned

**C H A P.** demned him, not only in the Legacy or  
**XXXVII.** Tithes, (as the Case is) but in the Costs  
 of Suit, notwithstanding the Promœvent  
 failed in proving his Libel.

Appeals left  
 with a Notary  
 Publick.

§ 24. An Appeal when read and interposed before a Notary Publick, and signed by him has been often taken by the Proctor, and kept by him, until there be a Necessity of exemplifying it in Form of a publick Instrument.

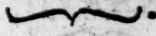
§ 25. By which means there may be Additions to, or Subtractions from it, to the Prejudice of the Party Appellat; which are not so likely to happen, if it be left with the Notary.

§ 26. And the Appellant might suffer likewise, if the Notary should die before a publick Instrument was formed on the Appeal; for unless the Appeal be found among the Papers of the Notary, no such Instrument can be formed.

§ 27. And if it be found among his Papers, another Notary may form a publick Instrument thereon, finding such Papers faithfully kept, and the Appeal among them, and knowing the  
 Hand

## Appeals.

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Hand and Seal of the deceased Notary ; C H A P.  
and he shall take down the Witnesses XXXVII.  
that were present at finding the Appeal,   
who shall be named in such Instrument,  
and this Instrument will be valid.

Therefore it is the safer Method to  
leave the Appeal with the Notary.

§ 28. The Instrument is to be directed to all Christian People, to be conceived in the Name of the Notary Publick before whom the Contents of it were expedited ; and the Year, Month, Day and Place where they were expedited.

Instrument upon Appeals  
how to be formed.

§ 29. Witnesses are to be joined to it, their Names specified, with their Places of Abode, that they may be found out, if there be any Dispute about the Instrument ; the Name, and Sirname of the Notary forming the Instrument ; the Authority which made him a Notary, the Place he was born in to be inserted in it, and the Seal of his Office to be annexed to it, that he may be known if there be more Notaries of the Name.

§ 30. And he shall testify at the End of the Instrument, that he was required to form such Instrument ; and that  
the



C H A P. the Witnesſes aforeſaid were alſo re-  
 XXXVII. quired to bear Witneſs of it.

§ 31. And he ſhall alſo make them ſign the original Appeal; that if there be any Doubt whether it was interpoſed, the Witneſſes ſeeing their Hand-writing may remember it.

And it is held that all theſe Particulars are neceſſary to make an Inſtrument on an Appeal authentick.

Raſures or Interlineations.

§ 32. If there be any Raſure or Interlineation in any ſubſtantial Word of it, as the Names of the Parties, the Days of the Year, or Month; or if the Notary is a Domeſtick or Relation of the Party, and not indifferent to both: If theſe Things appear, and the Inſtrument be denied; it is not of itſelf of ſufficient Force or Credit, and therefore the interpoſing the Appeal muſt be proved by Witneſſes.

§ 33. And with Reſpect to Raſures or Interlineations, if the Notary attests at the End of the Inſtrument under his Hand, that they were made by himſelf, and known by him before the Inſtrument was ſigned and ſealed by him, if he be an honeſt and an indifferent Notary, it is ſufficient.

C H A P.

C H A P. XXXVIII.

*Of adhering to the Appeal, and prosecuting an Appeal from Part of the Sentence.*

SECT. I. **W**HEN there is an Ap-  
Adhering to Appeal.  
 peal from the whole Sentence, the Appellat may adhere to the Appeal, and take the Advantage of it, although he himself did not appeal.

§ 2. As when the Judge did not condemn the Appellant in Costs; or if the Judge ought to condemn the Appellant in a greater Sum for Tithes, or Legacies from the very Proofs made before him.

§ 3. If the Appellat adhering to the Appeal proves this before the Judge to whom; he shall obtain Sentence for that Sum.

§ 4. But in Cases where the Judge can condemn the Party obtaining Sentence in Costs; or absolve the Adver-  
 S fary,

CHAP. fary, against whom Sentence was pro-  
 XXXVIII. nounced from Costs\*; and the Appellant  
 { appeals only from that, but acquiesces  
 in the rest of the Sentence: The Ap-  
 pellat cannot adhere to this Appeal.

Cases where  
 the Appellat  
 cannot adhere.

§ 5. Because he acquiesced in the Sentence; but in such Cases, where the Appellant obtaining Sentence appeals, because he was condemned in the Costs; or because his Adversary was absolved from Costs; the Appellat should appeal from Definitive Sentence, and prosecute it.

§ 6. And it is sufficient for the Appellant to prove that Sentence was pronounced for him, and against his Adversary, and that he appealed in proper Time for the Reasons above; for from thence that general Conclusion follows, that the Vanquished shall be condemned in Costs to the Victor.

\* See Chap. 27. Sect. 32, 34, 35, 36.

CHAP. XXXIX.

*Of prosecuting Appeals.*

SECT. I. **W**HEN an Appeal is interposed from Grievances, or from Definitive Sentence; an Inhibition is first to be obtained from the Judge to whom, in which a Citation is inserted for the Party Appellat; and he, the Judge from whom, and his Register are to be inhibited, that they proceed no further to the Execution of the Sentence, nor do any Thing to the Prejudice of the Appellant, pending the Appeal.

Inhibition.

§ 2. And the Inhibition is to be returned to the Judge to whom; and the Day on which the Judge and Party were inhibited, and the Appellat cited to answer in the Cause of Appeal is to be properly certified: And the Appellat not appearing is to be excommunicated, as in Causes of the first Instance.

Return of Inhibition.

§ 3. At the Time Inhibitions are prayed, it is usual to pray a Monition

Monition for transmitting the Proceed- ings.



C H A P. for transmitting the Proceedings of the  
 XXXIX. Judge from whom; which Monition is  
 frequently in the same Inhibition.

Appeals to the  
 King in Chan-  
 cery.

§ 4. All Appeals from Archbishops are made to the King in Chancery, and the Proctor for the Appellant should conceive the Form of a Commission, and intimate it to some Master in Chancery appointed for that Purpose; together with the Instrument of Appeal (if the Appeal was extrajudicial before a Notary Publick); or if the Appeal was at the Acts at the Time Sentence was pronounced; with a true Copy of the Act had and done before the Judge from whom, subscribed by the Writer of the Acts of such Judge.

§ 5. Because the Master shall testify under his Hand the Day of exhibiting such Instrument before him; and then the Proctor shall obtain the same under the great Seal,

§ 6. But now the Proctor for the Appellant conceives a Petition inscribed to the Lord Chancellor or Keeper of the Great Seal; in which is described among what Persons such a Cause was controverted, and depended; what was prayed

## Appeals.

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prayed by his Party in the same, and what the Judge decreed.

C H A P.  
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§ 7. And that his Party thinking himself aggrieved, and injured by such Decree, appealed to the King in Chancery in due Time and Place: Wherefore the said Party prays that a Commission of Appeal be made out under the Great Seal; and directed to Judges Delegates (to be named at his Discretion) to hear and determine such Cause.

Commission  
for Delegates.

§ 8. Wherefore the Chancellor orders his Secretary to write the Names of such as he appoints Delegates on one Side of said Petition, under Words to this Purpose; let there be a Commission made out to be directed to such and such Persons, and this he signs himself.

§ 9. And afterwards the Proctor conceives the Commission of Appeal, which (with the Petition granted and testified as aforesaid) he leaves with the Clerk of the Hanaper, who procures it to be engrossed in Parchment under the Great Seal.

§ 10. Any of the Delegates dying, or being absent, or refusing to take up-

Commission  
for joining o-  
ther Delegates.

C H A P. on them the Commission; a Commis-  
 XXXIX. sion for joining others to them may<sup>a</sup> be  
 ~~~~~ obtained at the Petition of either Party.

Commission of
 Review.

§ 11. And after Sentence is pronounced by the Delegates, a Commission of Review is often granted to re-examine the whole Proceedings; and sometimes with a Clause to admit new Allegations, and new Matter to be admitted by Law on both Sides, and this is final.

Commission of
 Delegation to
 begin a Suit.

§ 12. And sometimes a Special Commission of Delegation is granted to begin a Suit, and to proceed originally in a Cause from Citation to Definitive Sentence; as where an Archbishop is interested in the Cause to be controverted, and in other Cases.

Presenting the
 Commission.

§ 13. The Commission being obtained, the Proctor shall present it on the Part of his Majesty to the Delegates, and pray that they take the Execution of it upon them.

§ 14. And that they decree that the Judge from whom, and Party Appellat be inhibited; and that the Appellat be cited to appear on such a Day to answer
 in

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in a Cause of Appeal; and that the Judge from whom, and Register be admonished to transmit the Proceedings by a Day certain.

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§ 15. And the Delegates accepting the Commission shall decree that they proceed according to the Tenor of it, and as aforesaid: And you must proceed here, as in Appeals before Archbishops, with this Difference, that the Proceedings here are all summary.

Delegates accepting the Commission.

§ 16. When the Appellant is excommunicated, as either in the very Sentence of the Judge from whom, as in a Cause of Temerary Administration, or of Impediment to the last Will of the Deceased and others:

Or after Sentence, for not paying the principal Matter adjudged, or the Costs:

Or before Sentence, for disobeying the Monitions preceding it; then an Absolution from such Sentence of Excommunication to a certain Day (to be appointed by the Judge to whom) is to be inserted in the Inhibition: And a Mandate to all Rectors, Vicars, and Curates to denounce the same is to be inscribed in it.

Absolution of Appellant excommunicated.

C H A P.

XXXIX.

Commission
for administering the Oath.

§ 17. As the Party excommunicated must swear to obey the Laws Ecclesiastical before he be absolved, if he is at a great Distance from the Court, or sick; a Commission issues to some neighbouring Clergymen to administer to him the Oath upon that Occasion; with a Power and Mandate (after such Oath is administered) to all Rectors, &c. to publish and pronounce his Absolution to a certain Day.

Motion of
Proctor.

§ 18. And the Proctor praying the Inhibition with Absolution should exhibit his Proxy for the Appellant, and make himself a Party for him; and should declare that he appeals, prays, Apostles, complains, protests, and does all other Things as is contained in the Instrument of Appeal, which he should exhibit and leave at the Acts.

§ 19. Or if the Appeal was made before a Notary Publick, he should alledge that he appealed in due Place and Time, as well from Definitive Sentence or Grievance (as the Case is) as from Sentence of Excommunication: And pray that it be decreed that the Judge from whom, his Register, and the Party

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ty Appellat in particular, and all others C H A P.
in general, be inhibited to do, or attempt XXXIX.
any Thing to the Prejudice of the Ap-
peal, while the Appeals depends.

§ 20. And that the Appellat be cited Citation for
Appellat.
to appear to answer the Appellant in a
Cause of Appeal: And an Act of all
this is to be conceived by the Register;
and the Judge shall decree Inhibition
and Citation as required; and absolve
the Appellant to a certain Day (he
having first taken the usual Oath) and
decree denunciatory Letters of Absolu-
tion without Costs; unless the Judge
from whom signified for the Writ *De*
Excommunicato Capiendo against him.

§ 21. When there is an Appeal Appellant ex-
communi-
cated giving in
a Libel to be
absolved sim-
ply.
from Sentence of Excommunication,
and Absolution is granted to a certain
Day; as soon as the Appellant gives in
his Libel, it is held by many, and it
has been often adjudged, that the Ap-
pellant is to be absolved simply and ab-
solutely.

§ 22. If Sentence be pronounced,
and the Judge immediately at the Time,
or just before it be pronounced, shall
aggrieve the Party against whom it is
pronounced;

C H A P. pronounced ; by rejecting his Witnesses,
 XXXIX. or any Matter of Defence to be admitted by Law.

Appeal from
 Grievance
 committed
 immediately
 at the Time
 of Sentence.

§ 23. The Appellant justifying the Appeal from such Grievance shall obtain Sentence with all his Costs ; and such Definitive Sentence shall be repealed (though it be just as to the Merits of the Cause) as Attempts, although there was no Appeal from such Sentence : Because such Sentence was pronounced within the Time indulged by Law for appealing from the Grievance.

§ 24. But the Party Appellat may obtain Sentence as to the principal Matter with his reasonable Costs expended in the first Instance, as before the Judge from whom : And this has been adjudged.

§ 25. If the Judge from whom, or the Party Appellat shall do or attempt any Thing to the Prejudice of the Appellant ; after they were inhibited ; or within the Time allowed for prosecuting the Appeal ; or within the Time indulged for appealing.

§ 26.

§ 26. Then in this Case the Proctor for the Appellant shall alledge before the Judge to whom, that he appealed in due Time and Place from Definitive Sentence or Grievance (as the Case is) in such a Cause; and that the Judge and Party Appellat were properly and duly inhibited; and that, notwithstanding such Inhibition, the Judge from whom proceeded in the Cause by attempting such and such Things (here the Attempts to be specified) against the Inhibition: Wherefore he should pray that such Attempts be first of all revoked.

Attempts to be repealed.

§ 27. And if the Appellat (for this Allegation is usually made in Presence of the Proctor for the Appellat) does not deny the Matters alledged; they are to be revoked; but if they are denied, they must be proved; and if proved, they shall be revoked; and the Appellat condemned in the Costs made upon the Proof.

§ 28. And the Appellant is not obliged to prosecute or proceed in the Cause of Appeal, until these Attempts are first discussed, and retracted: At least

Attempts first of all to be discussed.

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least he should first of all pray that they proceed in them, least he should seem to recede from them: but he should take care in the mean Time that his Cause of Appeal be not deserted by prosecuting the Attempts, and omitting to prosecute the Appeal, when he can proceed at the same Time in both.

§ 29. If the Appellant inhibits the Judge from whom, so that his Hands are tied up from proceeding in the Cause; and does not cite the Appellat, or cites him, but does not certify that, nor return the Inhibition; the Proctor for the Appellat may appear under a Protestation of not consenting to the Judge, nor allowing his Jurisdiction, but as far as he is obliged by Law; and this Protestation to be held and had as repeated in all Things said, or to be said, done or to be done by him:

§ 30. And he shall exhibit his Proxy for the Appellat, and make himself a Party for him; and under the former Protestation (which Protestation is highly necessary, for otherwise you would seem to assent to the Judge) alledge that the Appellant obtained Inhibition and Citation from this Court, by Vir-
tue

due of which the Judge from whom was C H A P.
inhibited to proceed in the Cause; but XXXIX.
the Appellat not cited; (or if cited)
that the Appellant has not certified the
Citation; and neglects to prosecute the
Appeal.

§ 31. Wherefore he prays that it be Decree for
decreed that the Appellant be cited, to prosecuting
prosecute the Appeal on a competent the Appeal.
Day; on Pain that the Cause be remit-
ted to the Judge from whom, and the
Appellat dismissed with his Costs;
which the Judge shall decree.

§ 32. The Appellant being cited ac- Appellant not
cording to the Tenor of the Decree; prosecuting
on the Day appointed for his Appear- Appellat to be
ance the Proctor for the Appellat (un- dismissed with
der his former Protestations) shall re- Costs.
turn the Mandate, and certify it's Ser-
vice; and shall accuse the Contumacy
of the Appellant, and pray that he be
pronounced contumacious, and on Pain
of such Contumacy, that the Cause be
remitted to the Judge from whom; the
Appellat dismissed, and the Appellant
condemned in the Costs made on the
Part of the Appellat.

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XXXIX.

Monition for
Payment of
Costs taxed.

§ 33. Which the Judge (the Appellant being thrice called, not appearing, and pronounced contumacious) shall do, and licence the Judge from whom to proceed in the Principal Cause instituted before him, notwithstanding the Inhibition; and condemn the Appellant in Costs: And a Schedule of such Costs being tendered and taxed; he shall decree a Monition against the Appellant to pay them.

And by the Stile of some Courts the Costs to be taxed are thirty three Shillings and four Pence; and that without the usual Oath.

Modern Method of obtaining a Dismissal.

§ 34. But by the modern Practice (the Appellant having a lawful Proctor proceeding in the Cause for him) the Appellant need not pray a Decree for him to prosecute the Appeal; but (making the Protestation aforesaid) should pray that the Appellant give in his Libel; or that he be dismissed: And if the Appellant does not libel, he shall be dismissed with his Costs; and the Cause remitted to the Judge from whom; without any Decree preceding for the Appellant's prosecuting the Appeal.

§ 35.

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§ 35. By a Canon in this Kingdom, no Inhibition shall be granted out of any Archbishop's Court, or Court of Prerogative, unless it be subscribed by an Advocate practising in the said Court; which the Advocate shall do without Fee, unless the Party voluntarily gives him something for his Advice*.

Inhibition to
be signed by
Advocate.

§ 36. Nor shall Inhibition be granted by the Bishop or his Chancellor against any inferior Judge, unless subscribed in the same Manner; or if there be no Advocate in the Court, unless it be subscribed by a Proctor practising there.

§ 37. And by another Canon†, before the going out of an Inhibition under the Form aforesaid, by Occasion of any Interlocutory Decree; or in any Cause of Correction whatsoever; the Appeal itself, or a Copy thereof avouched to be true shall be exhibited before the Judge, or his Surrogate; that he may be informed of the Crime and the Grievance, before he grants the Inhibition.

§ 38.

* See Can. 58. Car. I.

† See Can. 59. Car. I.

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Copy of Appeal and Acts whereby the Party is aggrieved to be exhibited before Inhibition be obtained.

§ 38: And the Appellant, or his Proctor shall, before he obtains Inhibition, exhibit to the Judge or his Surrogate a true Copy of the Acts whereby he thinks himself aggrieved, and from which he appeals.

§ 39. Or shall take his Corporal Oath that he endeavoured to obtain the same from the Register, tendering him his Fee, but could not:

And the Judge or Register acting against this Canon shall be suspended from his Office for the Space of three Months, and any Proctor or others for the Space of a Year.

C H A P. XL.

*Of the Libel and Transmiss, and
exhibiting the Instruments of
Appeal.*

SECT. I. **I**F in Causes of Appeals Libel both Parties appear before the Judge to whom by their Proctors; the Appellant shall give in his Libel, and Proceedings are to be carried on (the Proctors making the same Motions, and Judge decreeing in the same Manner) as in the first Instance.

§ 2. Only if a Monition for transmitting the Proceedings was not obtained at the Time Inhibition and Citation was decreed; the Appellant (before probatory Terms are assigned) shall pray the Judge to decree a Monition against the Judge from whom; and the Writer of his Acts to transmit the whole Proceedings, and the Acts in the Cause; which the Judge shall decree, appointing a Day for transmitting them.

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XL.

Term for
proving Libel.

§ 3. And afterwards the Appellant, or if he will not, the Appellat may pray that a competent Term be assigned him to prove his Libel; and the Judge usually assigns the Court-Day after the Proceedings are transmitted.

Grievance
confessed Pro-
ceedings to be
transmitted.

§ 4. If, before the Proceedings of the Judge from whom be transmitted, the Appellat confesses in an Appeal from Grievances, the Grievance alledged, and pays the Costs; the Appellant, if he was Promovent in the first Instance, should transmit the Proceedings at his own Expence, otherwise the Judge to whom cannot proceed in the principal Cause.

§ 5. Or if the Appellat was Promovent in the first Instance, and he is desirous that the Judge of the Appeal should proceed in the principal Cause; he should take care that the Proceedings be transmitted.

Impugnant
unjustly sued
in the first In-
stance should
transmit the
Proceedings.

§ 6. The Impugnant also in the first Instance, whether Appellant or Appellat; if he thinks that he is unjustly sued in the first Instance; and has expended much Money in the Cause; to recover it in the Appeal, he may at his own Expence

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Expencc transmit the Proceedings : For the Costs of the Transmiss will be allowed if he obtains Sentence.

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§ 7. But if the Appellat will not confess the Grievance, but consents to the Judge, and to proceed in the principal Cause to avoid further Costs and Vexation; the Appellant willing to prosecute the Cause of Grievance should transmit the Proceedings at his own Expencc; which if he refuses to do, he is to be condemned in the Costs of that Cause to the Appellat.

Appellat not confessing the Grievance, but consenting to the Judge Appellant to transmit Proceedings.

§ 8. But if the Proceedings be transmitted, and the Grievance appears from them, the Appellat shall be condemned in Costs: And if the Appellant imagines that he cannot prove the Grievance, he should consent to drop that; and to prosecute the principal Cause.

§ 9. The Proceedings of the Judge from whom are to be exhibited before Conclusion in the Cause, and some Prosecutor of the Court shall present the Proceedings to the Judge to whom, on the Part of the Judge from whom and his Register.

Proceedings to be exhibited before Conclusion.

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Sum for Pro-
ceedings taxed
and Monition
for Payment.

§ 10. And the Proctor of the Appellat, or some other employed by the Register of the Judge from whom, for that Purpose usually takes Care, that the Judge to whom tax the Sum to be paid by the Party, at whose Instance the Proceedings are transmitted, at the End of the Transmiss; and prays a Monition against him for the Payment of such Sum.

§ 11. Because an Appeal from Grievances cannot be justified, but by the Proceedings, and Acts of the Judge from whom; and because when any Matter or Allegation is given before the Judge of the Appeal, in a Cause of Appeal from Definitive Sentence by either Party; it is not known whether it was before propounded; and whether Witnesses were produced, sworn, and examined, and their Depositions published thereon, but by looking into the Proceedings of the Judge from whom.

§ 12. And because it cannot be known, but by looking into the Transmiss of the Judge from whom, whether all the Proceedings were truly and faithfully transmitted; or whether they

be

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be not corrupted, or vitiated, in any Respect.

C H A P.

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§ 13. And if any of them are omitted or corrupted, the Proctor should alledge that such and such Things are omitted out of the Proceedings, or corrupted; and that the Transmiss is not entire, nor perfect; and should pray a Decree for such Things as are omitted, and for the true and genuine Proceedings:

§ 14. And because Informations of the Matters alledged, propounded, and proved in the first Instance cannot be given by Advocates to the Judge to whom, without inspecting into the Proceedings of the Judge from whom.

§ 15. That the Parties should not be obliged at great Expence to take out Copies of the Proceedings; and that Proceedings may not stop to the Prejudice of the Litigants; both Parties generally agree with the Register for Liberty to inspect the Transmiss,

Agreement
for inspecting
the Transmiss,

§ 16. The Appellant, as he transmitted the Proceedings at his own Expence, usually pays one fourth Part of the Sum

T 3

taxed,

CHAP.

XL.

taxed *, and the Appellat one third and that neither of the Parties should detain the Transmiss to the Detriment of the other, they leave some Caution, with the Register; or sign a Paper acknowledging the Receipt of it, and promising to return it when required.

§ 17. And if when required, they do not return it; the Judge may refuse to hear the Cause, or may excommunicate them: And a Proctor detaining such transmiss may be suspended until he restores it.

Exhibiting
Appeals judicially.

§ 18. Although the Appeal was read, and interposed at the Time Inhibition was granted, before the Judge to whom, (as is usual in Appeals from Excommunication), and left at the Acts with the Register; because it was read in the Absence of the Party, it must be exhibited judicially in his Presence before Conclusion in the Cause.

§ 19. And the Proctor for the Appellant shall in Words to this Effect, to strengthen the Proof of the Contents of his Libel before given in by him; and
to

Appeals.

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to found the Jurisdiction of the Judge; CHAP.
exhibit the Appeal heretofore judicially XL.
interposed in this Cause by him, and
remaining with the Register, and in this
Cause neither an Allegation, nor an An-
swer of the Proctor for the Appellant is
required.

§ 20. But in Appeals made extraju- Exhibiting
dicially, the Proctor for the Appellant Appeals made
shall exhibit the Appeal so made, and extrajudi-
cially,
read before a Notary Publick; and ex-
emplified in the Form of a publick In-
strument by such Notary Publick, be-
fore Conclusion in the Cause.

§ 21. And he shall say that to aid the
Proofs of the Contents of his Libel;
and to found the Jurisdiction of the
Judge he exhibits such publick Instru-
ment of Appeal, signed by such a No-
tary, and sealed with his Seal of Office,
and shall alledge that he is a good and
legal Notary Publick; and for such is
commonly had and reputed; and that
all and singular the Contents of that In-
strument were, and are true; and that
he appealed and complained in Manner
and Form contained in said Instrument;
Which Allegation he should propound
jointly and severally, and pray that it

C H A P. be admitted, and that Right and Justice
XL. be administered to him.

Answer there-
to,

§ 22. And this Allegation being admitted; if the Proctor for the Appellat denies the Instrument to be subscribed and sealed by the Notary; then the Proctor for the Appellant may swear that he faithfully propounded such Allegation, and pray that the Proctor for the Appellat be sworn to answer it next Court-Day.

Notary (if denied) to be proved a true and Legal Notary.

§ 23. And if he then denies it; or alledges that he does not believe the Person pretended to be a Notary to be a true and legal Notary, the Appellant must prove it: And he may prove the Person a Notary, by exhibiting the publick Instrument, creating him a Notary; which is sufficiently known by all Proctors; and the Confession of the Proctor thereon is sufficient to prove the Appeal as specified in such Instrument:

§ 24. But if the Notary who subscribed the Instrument was a Notary of ten Years standing, and known to the Judge and Court; because different Instruments of his in like Causes were exhibited,

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hibited, and remain with the Register C H A P.
of the Court.

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§ 25. And if throughout that Time he is reputed and esteemed a good and legal Notary; the exhibiting the Instrument of Appeal, and making the Allegation aforesaid is held sufficient, without the Confession of the opposite Proctor to it; and that although he denies the Instrument and Allegation; and so it has been adjudged.

§ 26. Proctors for the Appellant upon exhibiting Instruments of Appeal allege that all and singular the Contents of them are true, &c. and if denied, make Oath that they are faithfully pronounced, and are true, in order to obtain the Answer of the adverse Proctor upon Oath to them.

§ 27. Therefore they should be cautious in making such Allegations, or at least in swearing to the Truth of them; For in such Instruments the whole Tenor of the Appeal, the Grievances and Nullities are inserted; and therefore such Oath is against the Conscience of Proctors; for how can they justly swear that they are all true? The Grievances, Nullities,

Proctors to be cautious in swearing to the Truth of the Contents, in order to obtain the opposite Proctor's Answer upon Oath.

CHAP. lities, Injustices, &c. alledged in the
 XL. Appeal? And therefore they should
 omit that Part of the Allegation which
 is the safest Method,

In Appeals
 from Defini-
 tive Sentence
 Matters may
 be alledged
 not alledged
 before.

§ 28. In Causes of Appeal from De-
 finitive Sentence it is held that the Ap-
 pellant and Appellat may alledge Mat-
 ters not alledged before the Judge from
 whom, and prove Things not proved
 before him, if Publication of the Depo-
 sitions of Witnesses produced in the first
 Instance does not hinder it.

§ 29. But this cannot be done in
 Appeals from Grievances; for those are
 to be proved from the Proceedings of
 the Judge from whom; unless they
 have been omitted out of the Transmiss
 sent by him, or were not entered among
 the Acts.

C H A P. XLI,

Of Desertions of Appeals.

SECT. I. **A**S the Law allows only Term of Law for finishing Appeals. a Year for finishing Appeals, the Appellant should conclude in the Cause before the End of the Year; and should pray, and insist that the Judge of the Appeal pronounce his Sentence; or should protest concerning his own Diligence in that Behalf: Otherwise the Appellant may alledge that the Appeal is deserted; and the Judge is obliged to pronounce first of all upon that Article of Desertion.

§ 2. Although the Law points a Term of Man for prosecuting. Term for prosecuting the Appeal; yet the Judge from whom may assign a shorter Term for prosecuting at his Discretion; or at the Petition of the Adversary; and if the Appeal is not prosecuted within that Term, it is likewise deserted.

§ 3. And this is called the Term of Man as assigned by him for prosecuting; the other is called the Term of the Law, which

CHAP. which the Law assigns for prosecuting
XLI. and finishing the Appeal.

Decree to
shew Cause
why the Ap-
peal is not de-
serted.

§ 4. In these two Cases the Appellat may pray a Decree against the Appellant (unless he has a Proctor appearing for him in Court) to appear on a Day certain, and shew Cause why the pretended Appeal interposed from such a Sentence should not be decreed deserted; the Appellat dismissed with his Costs, and the Cause remitted to the Judge from whom: which shall be granted.

Mandate re-
turned.

§ 5. The Mandate being executed and returned, if the Appellant does not appear, or appearing does not alledge sufficient Reasons against pronouncing the Appeal deserted, nor gives in a Libel; nor prays a Term to Libel, and prosecute the Cause: The Judges shall pronounce the Appeal deserted, remit the Cause to the Judge from whom, and dismiss the Appellat with his Costs,

Appellant li-
belling, Ap-
pellat may
stop Proceed-
ings by alledg-
ing the Deser-
tion of the
Appeal.

§ 6. But if the Appellant gives in a Libel, the Appellat to stop Proceedings, should alledge that the Appeal is deserted; and if he enters into the Proof of that,
the

Appeals.

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the Cause of Appeal is to stop, until that C H A P.
Matter be discussed and determined. XLI.

§ 7. And if the Desertion be proved, the Judge shall pronounce that the Appeal is deserted, and that the Cause be remitted to the Judge from whom; and the Appellant shall be condemned in Costs; but if the Appellat fails in Proof, the Appellant may obtain Sentence, or an Interlocutory pronouncing that the Appeal is not deserted; and condemning the Appellat in the Costs made upon that Point.

§ 8. And then the Appellant may ^{Protestation of} proceed in the Principal Cause: and he ^{Appellant,} should protest upon every Act done in the Business of the Desertion of the Appeal, that he is ready to prosecute the Appeal; but that he is hindered by the Appellat in the Prosecution of it.

§ 9. The Proctor for the Appellat ^{Proving the} alledging the pretended Appeal inter- ^{Desertion,} posed in the Cause to be deserted; and praying that such pretended Appeal be pronounced deserted, the Cause remitted to the Judge from whom, and the Appellat dismissed with his Costs; in order to obtain Sentence, and to prove this

C H A P. this Allegation, he may do it by referring himself to the Acts of the Court, and to the Law; and by the Date of the Inhibition; or by the first Act upon granting the Inhibition.

XLI.

§ 10. But if the Inhibition be not returned; nor any Act done upon granting it, then the Allegation of the Desertion is to be proved, by exhibiting a Copy of the Act of the Judge from whom upon his pronouncing Definitive Sentence, subscribed by his Register, and compared with the Original.

§ 11. And if this Act is confessed by the Appellant to be a true Copy of the Act of the Judge from whom; or it be proved to be such; and it appears to the Judge of the Appeal from inspecting the Act, that a Year has lapsed from the Time Sentence was pronounced; or from interposing the Appeal, if such was interposed; the Judge shall pronounce as prayed in the Allegation.

§ 12. And although the Appellant is cited to shew Cause why the Appeal should not be declared deserted; the Appellant may suffer him to give in his Libel, and to proceed in the Cause until

til the Proceedings of the Judge from whom are transmitted ; and then alledge the Defertion of the Appeal, which may be the more readily proved by inspecting into the Transmits of the Proceedings.

C H A P.
XLI.

§ 13. For if the Appeal was extra-judicial before a Notary Publick, and neither that, nor the Inhibition of the Judge are returned ; but remain with the Appellant ; it will be difficult to prove the Defertion of the Appeal, which may be easily done by inspecting the Transmits.

§ 14. Impediments may be alledged to prevent Sentence for the Defertion of the Appeal : And such as prevent prosecuting and finishing the Appeal within the Term of Law are as follow :

Impediments
preventing the
Defertion
within the
Term of Law ;

First, If the Appellant cited the Appellat to answer in a Cause of Appeal, and he did not appear, and thereupon was excommunicated, and denounced ; it is a lawful Impediment for the Time in which he stood out excommunicated.

§ 15. *Secondly*, If the Appellat gave in any contrary Matter, or Exceptions not to be admitted ; or perhaps to be admitted,

C H A P. admitted, and so was or were admitted;
 XLI. about the Discussion or Proof of which
 some Time was taken up, during which
 the Appellant could not proceed; and
 yet nothing was proved; it is a lawful
 Impediment.

§ 16. *Thirdly*, If the Proctor of the Appellant gave in any Matter to be by Law admitted; and the Appellant opposed it, and hindered the Admission of it for some Time; and it was afterward admitted and proved: It is an Impediment for such Time as it was impeded.

§ 17. *Fourthly*, If the Appellant is so poor, that he could not prosecute, and finish the Cause within the Year; upon proving his Poverty he is to be allowed another Year.

§ 18. *Fifthly*, If the Appellant was imprisoned for the whole, or most of the Year; or prevented by the Plague, or any other Impediment from the Hand of God; or the Commands of his Prince from prosecuting the Appeal; he is to be allowed as much Time at least as he was prevented.

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XLI.

§ 19. *Sixthly*, If the Appellant had the Judge from whom, and his Register admonished to transmit the Proceedings; and on the Day they were to be transmitted (and they not being transmitted) he accused their Contumacy; and insisted that they should be excommunicated; and tendered a Sentence of Excommunication against them to be read by the Judge; which he refused to do, but reserved their Contumacy; and so put it off from Time to Time; this is a good Impediment.

§ 20. For the Appellant (the Proceedings not being transmitted) could not prosecute the Cause: But he should take Care that it be inscribed among the Acts, that the Reservation of their Contumacy in not transmitting the Proceedings was not made at his Petition:

§ 21. *Seventhly*, If for the two or three last Months of the Year, the Cause, by the Consent of both Parties, was under Compromise; a second Year is granted:

U

If

CHAP. If the aforesaid, or any other lawful
 XLI. Impediments happen the second Year,
 ~~~~~ the Appellant should pray a Restitution  
 of a third Year; and in this should be  
 very careful to finish his Cause.

Impediments  
 hindering the  
 Prosecution  
 within the  
 Term of Man.

§ 22. The Impediments hindering the Prosecution of the Appeal within the Term assigned by the Judge from whom; are *First*, The Length of the Journey from his Court to the Court of the Judge to whom; so that the Inhibition could not be obtained before the Day assigned to prosecute.

§ 23. *Secondly*, If in Appeals from Archbishops, the Appellant applied diligently to the Chancellor within the Time to prosecute, to obtain the King's Commission to Delegates under the Great Seal; and he was not at Leisure to seal it: It is a Prosecution in Law.

§ 24. *Thirdly*, So in Appeals to Archbishops, if within the Time to prosecute, the Judge to whom is applied to; and through his Fault and Neglect the Inhibition is not issued, nor sealed; and if it was offered to the Judge to whom by the Appellant, to be sealed with-

## Appeals.

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within the Term for prosecuting : It is a proper Prosecution.

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XLI.

§ 25. *Fourthly*, If the Appellant before the Day given to prosecute, went to the Judge from whom, or his Register, to apply for a Copy of the Sentence ; or the Acts of Court to enable him to prosecute the Appeal ; and if they were refused him ; or the giving of them put off until the Day assigned to prosecute did lapse : It is a just Impediment.

§ 26. And in these Cases the Impediments must be alledged, and proved before Conclusion in the Cause ; because the Presumption is against the Appellant : For no Impediments but such as appear from the Acts can be alledged after Conclusion.

Impediments  
to be proved  
before Con-  
clusion.

§ 27. And it is sufficient for the Appellant to prove the Desertion of the Appeal within the Term of Man ; to shew the Day Sentence was pronounced ; the Act upon assigning a Term to prosecute, and the Date of the Inhibition : From which the Desertion will evidently appear.



## C H A P.

## XLI.

Protestation  
upon the In-  
tervention of  
Impediments.

§ 28. When an Impediment intervenes from the Adversary, or the Judge, or any other Way; if not necessary, it is at least the safest Method for the Appellant to protest in the very Acts where the Impediments do intervene; that the Cause has not stood, nor stands, nor shall stand through him or his Party, that it be not finished within the Time allowed by Law.

§ 29. But that it stands through the means of the adverse Party, or the Judge; or any other Means (as the Case is) that it cannot be ended: And this Protestation will be a Security to the Appellant.

Two Assignations infer Conclusion.

§ 30. As Impediments not appearing from the Acts cannot be alledged after Conclusion in the Cause; if the Appellant alledged the Appeal to be deserted, and the Judge assigned twice to hear his Will upon that Article of Desertion; as those two Assignations infer Conclusion; the Proof of the Impediments by Witnesses will not be admitted afterwards. But *Quare?*

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§ 31. If the Appellant was negligent in the first and second Part of the Year, but diligent in the third; in which Time he might finish his Cause, but that an Impediment intervened by which he was hindered.

§ 32. If his Diligence to prosecute and end the Appeal (if such Impediment did not arise) appears from the Acts; and if the Impediment be proved, a second Year shall be granted.

§ 33. But it is the Opinion of some, <sup>Second Year</sup> that in such Case a whole second Year <sup>granted.</sup> shall not be granted; but only so much of the second Year as the Appellant was hindered in the first.

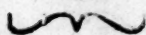
§ 34. If the Appellant was diligent in the first and second Part of the Year, and an Impediment intervened, and (it ceasing) there still remained so much Time as the Appellant might finish the Appeal in; a second whole Year is not to be given, but only so much of a second as the Appellant was impeded in the first Year.

U 3

§ 35.

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§ 35. But on the other Hand it is the modern Opinion that this is not to be granted ; if there remained after the Impediment as much Time as the Appeal might be finished in.

And the Time sufficient is generally reckoned a Month, or is rather to be determined by the Opinion of the Judge.

## C H A P. XLII.

### *Of Sentence in Appeals.*

SECT. I. **W**HEN the Judge has <sup>Sentence:</sup> proceeded in the Principal Cause \*, and pronounced for his Jurisdiction, and given his Sentence in the Cause of Appeal, it is to be executed as Sentences in the first Instance.

§ 2. The Costs are to be taxed in <sup>Costs taxed.</sup> the Presence of the Party, or (he being cited, and not appearing) on Pain of his Contumacy; the Party or his Proctor praying the Taxation, and offering the Schedule of Costs to be taxed, first swearing to the Costs expended, or to be expended by him.

§ 3. And a Monition is to be issued <sup>Monition for Payment.</sup> against the Party defeated to pay the principal Matter, and the Costs so taxed within a Day certain, as in Causes of the first Instance: Or the Judge may appoint separate Days for the Payment  
U 4
of

\* See Chap. 16.



C H A P. of the Principal (as Tythes or Legacies)  
XLII. and Costs.

Appellant fail-  
ing in the  
Cause.

Sentence of  
the Judge from  
whom to be  
confirmed if  
Proceedings  
were transmit-  
ted.

§ 4. If the Appellant fail in his Cause, either from the Acts of the first Judge, they being legal and just; or from the Acts of the second; because the Proceedings were not transmitted, or because the Appeal was deserted: The Judge shall first pronounce, that the Appellant failed in the Proof of his Libel, and that he unjustly appealed; and shall confirm the Sentence of the Judge from whom, if the Proceedings were transmitted.

§ 5. But if the Proceedings were not transmitted, he is not to pronounce upon that; because he cannot judge of a Matter that is not before him; and he shall pronounce as before, and remit the Cause to the Judge from whom, on Account of the Proceedings not being transmitted; or if an appellatory Libel be not given in, on Account of the Appellant's not libelling, as the Case is.

§ 6. And he shall condemn the Appellant in Costs, and may tax them in the same Sentence (the Party obtaining them, first swearing that he expended them,

them, or must expend them) and decree a Monition against the Appellant to pay them within a certain Day, under Pain of Excommunication pronounced upon him on Failure of his paying them within the Time appointed; the Monition preceding, and his Contumacy following; as in the like Monitions.

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§ 7. It is generally held that the Judge to whom, as soon as he has pronounced Sentence, and remitted the Cause to the Judge from whom, ceases to be a Judge in that Cause; so that unless in his Remissory Sentence he has taxed the Costs of Suit; and decreed a Monition against the Appellant to pay them within a certain Day appointed, under Penalty of Excommunication; he cannot tax them afterwards, nor compel the Appellant to pay them.

Whether the Judge to whom upon pronouncing his Remissory Sentence ceases to be Judge.

§ 8. But this seems to be against Law; for the Judge of the Court where the Costs have been expended is the properest Person to tax them, and to enforce the Payment of them; and the modern Practice allows the Judge condemning in his Sentence the Appellant in Costs, to reserve the Taxation of them; to tax them

CHAP. them afterwards, and to execute that  
 XLII. Part of the Sentence.

§ 9. For if the Judge did tax the Costs in the Sentence, and did decree a Monition against the Party to pay the Costs within a certain Time, excommunicating him (if admonished) and not paying within the Time; and the Party conceals himself, so that he cannot be served with the Monition; and the Day appointed for Payment lapses; and Sentence of Excommunication pronounced upon him in the Monition is extinct.

§ 10. The Party to whom the Costs were to be paid may have the Monition renewed; and the Judge in such Case does not pronounce the Party (in Default of Payment) excommunicated in this second Monition; but an ordinary Monition is to be granted; which is the usual Method.

§ 11. And likewise, if the Party admonished to pay was for Non-payment lawfully excommunicated, denounced, and taken upon the Writ *de Excommunicato capiendo*, the Judge may tax his Costs expended through his Contumacy, and compel him to pay them

them to his Adversary, notwithstanding C H A P.  
the Remissory Sentence. XLII.

§ 12. And therefore by a Parity of Reason the Judge to whom (although he did not tax the Costs in his Remissory Sentence, but reserved the Taxation) may tax them afterwards, and enforce Payment of them.

But the Party condemned in Costs should be cited to see them taxed; (and he not appearing) they are to be taxed in Penalty of his Contumacy.

§ 13. It is held that when Sentence is pronounced, and Taxation of the Costs reserved to the next Court-Day, if the Proctor of the Adversary be admonished to attend that Day, and see the Costs taxed, and a Day appointed for the Payment of them; if he does not appear, the Costs may be taxed that Day on Pain of his Contumacy, and a Monition decreed for the Payment of them.

§ 14. If I obtained Sentence in the first Instance from the Depositions of Witnesses, fully proving my Intention, and my Adversary having just Exceptions unknown to me, did not prove them



CHAP. them in the first Instance, but in the  
XLII. second.

Costs.

§ 15. He shall not obtain the Costs of the first or second Instance; unless I gave Exceptions against his Witnesses; and proved nothing: And then I should be condemned at least in the Costs made from the Day I proposed my Exceptions.

§ 16. If the Appellant obtained Sentence by new Proofs in the Cause of Appeal; which if he had made in the first Instance, the Appellat had not been put to so much Trouble and Expence; he shall not obtain the Costs of the first Instance.

§ 17. Unless the Appellat knew the Proofs that would be made in the second Instance, and the Appellant's Defence (as the Payment of a Legacy or Tythes) at the Time of the first Instance; and then the Appellat is to be condemned in the Costs of both Instances. But *Quære?* for the Appellant was in *Malá Fide* in not producing his Proofs in the first Instance.

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§ 18. If the Promovent obtained Sentence in a Cause of Tythes for a greater Sum than appeared to be due, either from the Confession of the Party; or the Proofs made; the Impugnant has a just Cause of Appeal: In which Appeal the Sentence shall be repealed with Regard to the Excess, but shall be in Force with Respect to the just Value of the Tythes.

§ 19. And the Appellant, unless he offered such just Value at the Time of his Appealing, shall not obtain Costs: and because the Party obtaining Sentence did not relinquish, and renounce the Excess adjudged was (as well as the Appellant) in *Malâ Fide*, and in such Case both deserve to be punished; there shall be a Compensation of Costs.

§ 20. The Appellant should offer the Sum due, and acquiesce to the Sentence of the Judge from whom, with Respect to that, judicially before the Judge of the Appeal in the Beginning of the Suit.

§ 21. And the Appellant should at least within ten Days after Sentence relinquish the Excess before the Judge from whom; or immediately upon his Appearance before the Judge to whom; and

C H A P. and then Costs will be decreed upon the  
 XLII. Adversary's persisting in the Appeal.

In Appeals  
 from Griev-  
 ances and De-  
 finitive Sen-  
 tence.

§ 22. If in Appeals from Grievances before Sentence, and afterwards from Sentence, both Appeals are contained in the same Inhibition, and specified in the same Libel; and if the Appellant fails in the Proof of the Grievance, but justifies the Appeal as to the Principal Cause; by shewing the Sentence of the Judge from whom to be unjust; or *Vice Versâ*.

The Appel-  
 lant justifying  
 one, and fail-  
 ing in the o-  
 ther, a Com-  
 pensation of  
 Costs.

§ 23. The Judge usually in such a Case pronounces two Sentences; and as the Appellant failed in proving Part of his Libel, there is to be a Compensation of Costs.

§ 24. For as the Appellant frivolously and unjustly appealed from Grievances, or Sentence, as the Case is; he should be condemned in Costs as to that; but as he justified his Cause in one of the Appeals, he should have in that Respect Costs decreed him: For the Appellar obtained Sentence in one Appeal, and is entitled to Costs: There must be a Compensation therefore.

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§ 25. But suppose the Appellant expended more Money in his Appeal from Grievances; than the Appellant can prove that he expended in confirming the Sentence of the Judge from whom.

§ 26. As in Appeals from Threats of the Judge from whom, which appear not among the Acts in the Transmiss; and therefore must be proved by Witnesses.

§ 27. Or in Causes of Correction, <sup>Exceptions to</sup> where the Judge on Account of the Re-<sup>that.</sup> verence due to him is not made a Party in Appeals from Grievances or Sentence; and it does not appear from the Acts that the Grievance was inflicted at the Instigation and Promotion of the Appellant; you must produce Witnesses to prove that it was.

§ 28. And also where there is an Appeal from an excessive Taxation of Costs; if the Excess is not evident from the Acts (as it often happens when Costs are taxed for soliciting the Cause; and for expediting Commissions for the Examination of Witnesses) such Excess must be proved by Witnesses: And in these Cases the Appellant



**C H A P.** Appellant must be at extraordinary Expence.  
**XLII.**

§ 29. Here the Person obtaining Sentence shall obtain his ordinary Expences in prosecuting the Appeal; as well as his extraordinary Expences in proving the Facts not appearing in the Transmits.

§ 30. In these Cases it seems reasonable, and equitable that when more Money has been expended in prosecuting the one Cause; suppose for Instance the Cause of Grievance; than was expended by the opposite Party in defending the Definitive Sentence in the first Instance; and confirming that: And two different Sentences are pronounced; the one for justifying the Appeal from the Grievance; the other confirming the Sentence of the Judge from whom; that there should not be a Compensation of Costs.

§ 31. But that the extraordinary Sum expended in the one Cause, exceeding the Sum expended by the Adversary in the other Cause should be decreed for; and allowed the Party that has expended it: and that so much as the one Sum exceeds the other be taxed for him.

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A N

# I N D E X

O F T H E

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A

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THREE  
APPENDIXES  
TO THE  
Clerk's Assistant

In the PRACTICE of the  
**Ecclesiastical Courts :**

The First Containing,

A Short Summary of the Method of Proceeding in Causes in the Ecclesiastical Courts. Supposed to be wrote by a late Most Reverend and Learned PRELATE.

The Second Containing,

A Collection of Modern Rules of Practice and Cases adjudged in the Courts of DOCTORS COMMONS, digested under their proper Heads in Alphabetical Order. Extracted from the *Proctor's Practice*, by PHILIP FLOYER, Gent. of *Doctors Commons*.

The Third Containing,

A List of Fees in the CONSISTORY COURT, Carefully Revised and Corrected from the Errors of the former Table, published in *Robins's Abridgment of the Ecclesiastical Statutes*.

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APPEN.

## APPENDIX I.

What Causes are Cognizable in the Ecclesiastical Court. See *Zouch Descrip. Jur. & Jud. Eccles. Par. ii. & iv.* See *Clarke and Oughton.*

**W**HEN the Minister or Churchwardens present any Person for a Crime, or for the common Fame of a Crime, such a Cause is called a Cause of Office, and the Judge is said to proceed *ex mero officio*, the Proctor of Office, or in his Absence some other Proctor appointed by the Judge, being the necessary Promoter of the Office.

But if any private Person accuses another of any Crime, the Accuser is the voluntary Promoter of the Office, and the Judge is said to proceed *ex officio promoto.*

If one Man seeks Redress against another in the Ecclesiastical Court, as in Case of Defamation, Subtraction of Tythes,

## A P P E N D I X.

*&c.* such a Cause is called a Cause of Instance.

What in common Law we mean by Plaintiff and Defendant, in the Ecclesiastical Law we call *Actor*, *Pars Actrix*, or *Promovens*; and the Defendant *Reus*, *Pars Rea*, or *Impugnans*.

Every Cause is brought into Court by a Process, which the Judge issues out under his Seal of Office, and is returnable into Court on a certain Day therein mentioned, and under the Citation there must be an Abstract in *English* concerning the Manner of serving the Citation. *Can. ii. 1711.*

If the Apparitor, or other Person who undertakes to serve a Citation, makes Oath in Court that he could not find any of the Persons mentioned in said Canon ii, 1711, the Promovent's Proctor moves for a Citation *viis & modis*, which the Judge grants.

A Citation *viis & modis* being duly served, and Oath made of the Service, if the Party appears not, the Promovent's Proctor moves that he may be pronounced contumacious, and for a Citation *viis, &c.* (if occasion be) for him to shew Cause why he should not be excommunicated; which

## A P P E N D I X.

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which being granted by the Judge, and being duly served and returned upon Oath, if the Party then appears not, the Promovent's Proctor moves for a Decree *Excommunicandum fore*, and a Citation *ad videndum se excommunicari*; concerning the Service and Return of which, see Can. iv. 1711.

This Process being duly served, and upon Oath returned, if the Party still continues not to appear, the Promovent's Proctor moves that he may be excommunicated, and presents the Form of an Excommunication in Writing, which the Judge, if a Presbyter, reads, sitting with his Hat on, only moving his Hat when God or Christ is named, and signs his Name to it.

*Note*, that in a Cause of Office the Party must appear in Person, and is not allowed to appear by a Proctor, until he has received Articles: but in a Cause of Instance, Appearance is only by a Proctor: Note also, that the Return upon Oath of each Citation ought to be writ on the Back or at the Bottom of it, with a *Jurat*, signed by the Judge.

*Note,*



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*Note,* if the Party has run into Contempt by not appearing, no Appearance is to be received (whether Personal or by a Proctor) of or from him, until he purges his Contempt, and pays the Costs. This is expressly decreed as to Causes of Instance, *Can.* lxx. 1634; and the Practice takes Place also as to Causes of Office.

When the Impugnant appears, he may in his own Person, if it be a Cause of Office, or by his Proctor if it be a Cause of Instance, move for Articles or a Libel to be exhibited against him next Court-Day, or otherwise to be dismissed with his Costs; which the Judge is, by *Can.* lxi. obliged to grant; and therefore Care ought always to be had to have the Libel or Articles ready to exhibit. But whether he makes any such Motion or not, the Promovent's Proctor ought either then to exhibit the Libel or Articles, or else to move that he may be admonished the next Court-Day to receive them, and the Judge decrees accordingly.

Whenever Articles or a Libel are exhibited, the Promovent's Proctor moves, that the Impugnant or his Proctor be admonished to give in an Answer the next Court-

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Court-Day, which the Judge decrees; but upon just Cause given in upon Oath, the Judge may grant another Court-Day, but no longer Time, except there be something extraordinary, which is an unavoidable Cause of Delay.

When the Day appointed for answering is come, if neither Answer nor Exceptions are exhibited or entered; the Judge, upon Motion, pronounces the Impugnant contumacious, and orders a Citation against him, to shew Cause why he should not be excommunicated, and proceeds to Excommunication against him in the same Manner as is already set down. But if the Impugnant purges his Contempt, and pays Costs, he again becomes *Rectus in Curia*, and may exhibit his Answer, or enter Exceptions to the Articles or Libel, either of which must be done in writing.

Sometimes a Motion is made, that the Libel or Articles, if no Answer be given by a Time appointed, should be taken *pro confesso*: But I question much, whether such a Rule as this might not give sufficient Ground for an Appeal; and therefore don't think it the safest Way, especially in Causes of Moment.

When the Impugnant offers Reasons why such Libel or Articles ought not to be proceeded upon, or to shew that he is not obliged to answer them, the Reasons are called Exceptions, and are to be exhibited on the Day appointed for Answer in a Cause of Office; by the Impugnant himself; but in a Cause of Instance, by his Proctor.

*Note,* that sometimes an Impugnant excepts to the Jurisdiction of a Court, as supposing himself to be either not at all, or not in this Case subject to it, or to the Person of the Judge, as justly suspecting that he will not be impartial; and in each of these Cases he appears under a Protest, exhibits his Exceptions, and prays Arbitrators. But these are Cases that rarely happen, and therefore for the present I pass them by, and speak only of such Exceptions as are made to the Articles or Libel.

When an Impugnant or his Proctor exhibits such Exceptions, he usually moves for an Answer by next Court-Day, or to be dismissed with Costs; upon which the Judge decrees an Answer the next Court-Day; but no more.

When

## A P P E N D I X.

When an Answer to Exceptions is given in, the Impugnant desires until the next Court-Day to reply, and then if the Answer denies any Matters of Fact upon which the Exceptions are grounded, he prays a Term Probatory for the Production of Witnesses, and Proof of such Facts. But if the Answer denies Matters of Law, he joins Issue upon such Points of Law as he has alledged in the Exceptions, and prays the next Court-Day for the arguing them, which is granted.

I omit for the present to speak of the Term Probatory, and the Manner of producing and examining of Witnesses, because I shall have a more proper occasion for it by and by.

If upon hearing the Judge finds the Exceptions to be good in Law, he allows of them, and dismisses the Impugnant with Costs, in a Cause of Instance, or of Office promoted : But if the Exceptions are not sufficient, he condemns the Impugnant in Costs, on account of the Delay he has given, and that according to the Number of Court-Days he has stopped the Cause, (the Taxation of which Costs he may, if he pleases, reserve to the end of the S<sup>r</sup>.



and then upon Motion lays a peremptory Rule upon him to answer the next Court-Day; which if he neglects to do, the Judge upon Motion decrees him contumacious, and proceeds to excommunicate him as above.

*Requisita Libelli, Quis, Quid, Coram quo, Quo jure petatur & a Quo.*

The Articles or Libel must always contain a perfect Syllogism, of which the Major lays down some known Rule in Law, the Minor sets forth some Fact, and the Conclusion, in Consequence, demands something by way of Redress from the Judge. For Example, in a Defamation Cause, *He who by defamatory Words does an Injury to the good Name and Reputation of his Neighbour, ought to do Penance for his Fault, and make Reparation to his Neighbour whom he has thus injured; but on or about such a Day, and in such a Place, A. spoke such and such defamatory Words of B. therefore B. desires that he may be enjoined Penance, and to make him B. Reparation.*

The Answer therefore must either first deny the Fact, as if *A.* should deny that he spoke the Words alledged, or secondly, the

## APPENDIX.

II

the Matter of Law, or some necessary Part of it, as if *A.* should deny the Words alledged to be defamatory; or thirdly, plead something by way of Defence; as if *A.* should plead that *B.* is an infamous Person, and has no good Name or Reputation wherein to be injured, which is usually called Defensive Matter.

When the Impugnant has given in his Answer, the Promovent desires till the next Court-Day to reply, and then commonly Issue is joined, either upon a Matter of Fact or Law, or sometimes of both; but sometimes before Issue is joined, there is a Rejoinder, and Surrejoinder.

The joining of Issue is called *Litis Contestatio*, after which the Oath *de Calumniâ*, if taken by one Party and his Proctor, is not to be refused by the other Party and his Proctor, whenever demanded. See *Can. lxxx.*

If Issue be joined upon Matter of Law alone, the Judge appoints next Court-Day to have it argued; but if the Controversy be about Matter of Fact, whatever Fact be alledged by either Party, a Term Probatory, *Terminus Juris*, is prayed and granted

granted for the Production of Witnesses, to be examined for the Proof of it.

The Term Probatory is the Space of three Court-Days; upon all or any of which, Witnesses may be produced and sworn in Court; which Witnesses, when sworn, are by the Judge admonished to attend the Register upon Notice given, who privately examines each of them apart, and writes down their Testimony, which they respectively sign, and afterwards own the same before the Judge; (this is called Repeating,) who writes *repetit*, &c. and subscribes his Name to each Testimony, with the Day of the Month when the same was repeated. When a Witness is by one Party produced and sworn in Court, the other Party may require him to be sworn to Interrogatories, and *when a Witness is interrogated, no Exception is afterward to be made to him.* Query?

The Term Probatory may upon just Cause (to be proved by Affidavit) be enlarged by the Judge; but if there be not some very necessary Reason for it, it is a Ground of Appeal. If Oath be made that any necessary Witness refuses to come to Court, though his viatical Expences have been tendered him, the Judge upon Motion

tion grants a compulsory Process for him, and if he still refuses to come, proceeds to Excommunication.

If a Witness be at a great Distance, but in the same Diocese, the Judge, upon an Affidavit and Motion, grants a Commission to have him produced and examined at the Place where he lives, and his Examination is returned, together with his Commission sealed up, and Oath made that it has not been opened. If the Witness be in another Diocese, the Judge upon an Affidavit and Motion grants Letters Requisite to the Bishop of that Diocese, or his Official, for his Examination, and when taken, it is returned as before mentioned: nor is Publication to pass, until reasonable Time be allowed for the Examination of every Witness, which upon Affidavit made is believed to be necessary; but unreasonable Delays are never to be countenanced or allowed.

The Time for Examination of Witnesses being expired, either Party may move for a Publication of the Depositions, (which till then are kept secret) and the Judge decrees accordingly.



If any Exceptions are to be made against the Witnesses, or any of them, for the Invalidity of their Testimony; the usual Time when it is done is after Publication, and the Manner of Proceeding therein is the same as in Exceptions against the Libel or Articles, only sometimes Exceptions are made in general, and Time craved till next Court-Day to specify; but this seems only an Act of Delay, and therefore ought to be discouraged,

In some Cases, when the Promovent apprehends the Testimony of his Witnesses not to be sufficiently full, he may move for the Impugnant's personal Answer upon Oath; but this is not allowed where the Answer must be the Confession of a Crime, as in Causes of Defamation, Fornication, &c.

These Matters being thus over, there are certain other Rules to be run through several Court-Days, as follow:

*Ad Proponendum omnia.*

*Omnia Acta Proposita.*

*Ad Concludendum.*

This

This Rule, *ad Concludendum*, is not made in a matrimonial Cause, which is said never to be at an End, because it may at any Time be renewed.

*Ad Sententiandum ex Prima, ex Secunda & ex Tertia, & interim ad Informandum.*

There seems to be no great Use of these six last Rules, except it be to give the Advocates Time enough to apprise themselves of the Merits of the Cause.

In some Places the Information or hearing of the Cause is not upon a Court-Day, but at a Time and Place appointed for that Purpose; but in *Dublin* it is usually on a Court-Day.

The Information being over, the Judge immediately pronounces Sentence, which must be in open Court, and with his Head covered; but if there be any Difficulty in the Affair, he commonly deliberates till next Court-Day.

The Proctor presents the Sentence in Writing, which the Judge reads, and if there be any Mistake in the Draft, corrects it

it with his Pen as he proceeds, and then signs it. When Costs are given, mention is made of them in the Sentence, and the Taxation of them reserved to the Judge.

The Proctor brings the Bill of Costs to the Judge's Chamber, who taxes it to what Sum he in Prudence and Conscience thinks fit, and signs his Name to it; or if there be any Controversy about the Articles of it, it is sometimes debated by the Doctors on both Sides, either in open Court, or privately before the Judge.

If the Sentence be not obeyed, and the Costs paid, the Judge issues a Monition against the disobedient Party, and if he continues in Contempt, proceeds to excommunicate him.—Note, the Judge makes no Rule in Court but what is moved for; but if a Proctor makes a wrong Motion, the Judge may put him in his right Way.

Every Court-Day (when a Cause is called) the Rule made, the precedent Court-Day ought to be read, by which it will appear what is the proper Motion then to be made.—Note, that commonly in the whole Proceeding, when the Judge makes a Rule on the Motion of one Proctor, the other Proctor

Proctor enters his Dissent or Protest against it, the Reason of which is, that he may keep himself at Liberty either to accept or appeal, as there may be occasion; for he must not except against or appeal from a Thing he has once consented to. When in the Course of the Proceedings any Matter is determined by the Judge, which yet is not a Determination of the Cause itself, such a Determination is called an Interlocutory Decree.

## *Of an APPEAL.*

When either Party thinks himself injured, by the Judge's refusing to make a Rule that ought to be made, or making another that ought not, or giving a wrong Sentence either interlocutory or definitive, or immoderate taxing a Bill of Costs, or wrongfully excommunicating for no sufficient Cause; he may by his Proctor appeal to the next superior Judge.

This Appeal may be made either immediately by word of Mouth in open Court, or within ten Days (fifteen by the Statute) in writing before a Notary Publick.

The Appeal being either Way made, the Judge admits it, *Quatenus de Jure*, and appoints a convenient Time for the Appellant to prosecute his Appeal, and bring a Certificate from the superior Judge of such



such his Prosecution ; which Act of the Judge is entered in the Book, if the Appeal be made *Viva Voce*, or written on the Paper itself if it be made in writing.

At the same Time also the Judge decrees to the Appellant Apostles, that is, Letters Dimissory, or, which is the best Way, *Totum & Integrum Processum loco Apostolorum*; which is also entered in the Book or wrote in the Paper, according as the Appeal is made.

If the Appeal be not made in ten or fifteen Days, it is too late. If Apostles are not demanded within thirty Days after the Cause of Appeal, or an Inhibition procured from the superior Judge, the Judge *a Quo* pronounces the Appeal deserted, and proceeds as if there had been no Appeal at all.

*Note*, that if one Party sues another in a Cause of Defamation, the Impugnant may appear, and pray to proceed summarily, which is enacted by Parliament in a defamatory Cause, though a summary Proceeding in any other plenary Cause would be a mere Nullity.

*Note* also, that by the Style of the Prerogative Court, all Causes are summary, though they frequently proceed in a plenary Manner.

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## A P P E N D I X II.

A Collection of Modern  
Rules of Practice and  
Cases adjudg'd in the  
Courts of *Doctors Com-*  
*mons*, (*never before pub-*  
*lish'd*) digested under  
their proper Heads in  
Alphabetical Order.

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APPENDIX II.

Collection of Manuscripts  
of the Court of Doctors

judged in the Court of Doc-  
tors of Medicine & Surgery  
published by the Court of  
Doctors of Medicine & Surgery  
in the Court of Doctors

of the Court of Doctors

I have been told that the Court of Doctors  
has been read the Executor shall be cited to  
in the Court of Doctors. But in the Court of Do-  
ctors, or other persons, the  
Court of Doctors on the death of either Par-  
ty. See 2. Geo. 4. c. 11. s. 178.  
1. Geo. 6. c. 1. s. 133. 1. Geo. 6. c. 1. s. 133.

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## APPENDIX II.

*A Collection of Modern Rules of Practice and Cases adjudged in the Courts of Doctors Commons (never before published) digested under their proper Heads in Alphabetical Order.*

### *Abatement.*

**I**F the Client dies *post Litis Contestatio-Of Abatement.* *nem*, the Proctor continues till Sentence; *aliter* if before; and in Case of the Death of the Party, against whom Sentence has been read, the Executor shall be cited to shew Cause why such Sentence should not be put in Execution: But in Causes of Defamation, or other personal Action, the Suit shall abate on the Death of either Party. See 2 Cro. 483. 1 Leon. 117, 178. 1 Lev. 6. 1 Vent. 133. *Pollexfen v. Pollexfen.*



*Absolution.**Of Absolution.*

**A** Person taken by an *Excommunicato Capiendo* shall not be absolved till he has paid the Contumacy Fees, and also the Fees of the *Significavit*, the Writ, Sheriff's Attornies, and other Fees necessary in obtaining that Writ, and then the Judge restores him, and signifies his Absolution for obtaining the Writ *pro Corporis deliberatione*. Gibson 1107. In Contract Causes the Party excommunicated for not solemnizing Marriage according to Sentence, may be absolved on giving Security to obey the Commands of his Ordinary, &c. tho' in other Cases he shall first obey before Absolution.

If one appears, and is excommunicated for not answering to a Libel, (a Copy of which is refused, or has not been given him) he shall upon a Prohibition be absolved without taking the Oath *Melius parendi mandatis Ecclesie*; but if no Appearance, he shall not be absolved without that Oath.

*1 Sid. 232. Scurr. v. Burrell. 1 Vent. 5. 1 Sid. 403.* If Persons excommunicated be absolved, and have taken that Oath *de parendo*, &c. and shall be excommunicated again in *non parendo*, &c. they shall be proceeded against in a Cause of Perjury.

*Accounts.*

*Accounts.*

**A**N Account must be passed before the *Of Accounts.* same Judge, or his Surrogate or Successor that grants the Administration; as if *A. B.* the Official of any Archdeaconry grants an Administration, the Account must be passed before him, his Surrogate or Successor, and not before any Chancellor of a Diocese *tempore Inhibitionis*; *per Dr. Betsworth.*

In Causes of Account the single Oath of the Accountant shall discharge him of all Sums by him expended, not exceeding Forty Shillings; he shall be allowed his Expences in secular Courts, over and above such Costs as were allowed there. Funeral Expences, according to the Degree and Quality of the Deceased, are to be allowed out of his Goods before any Debts or Duties whatsoever. *Godolph. Abr. fol. 86. sect. 11. 3 Inst. 97.* Tho' for Strictness no Funeral Expences are allowable against a Creditor, except for the Coffin, Ringing the Bell, Parson, Clerk, and Bearers Fees, but not for Palls or Ornaments. *Per Holt, 1 Salk. 296, Shelley's Case.* An Administrator called to Account at the Promotion of a Party is bound to exhibit an Inventory, (but not under Protestation of adding, &c. as in common Form) tho' he had exhibited one before. He may have a Decree against

the Plaintiff in special, and all others in general having Interest, to see the Account passed and Distribution made. Since the 22d of *Charles II.* an Administrator is bound to account without Citation, and a Person intitled to Distribution by that Statute may sue the Administrator to prove his Account. *Salk. 315. Archbishop of Canterbury v. Wills. Noy 78. 2 Inst. 6. Tho. Raym. Rep. 407.* One Witness to prove the Sealing of a Bond, and one to prove Payment, with the Oath of the Party, is good Proof in Accounts. A Party praying an Account, having an Interest, is not to be condemned in Costs, unless he objects thereto and fails in his Proof; tho' in this Case such exact Proof is not required as in other Causes, therefore a Shop-Book is admitted as Evidence. Executors, where the Residue is not bequeathed, and who have a particular Legacy given for their Pains, and are therefore called Nude Executors, are liable to be called to Account, and distribute.

If an Administration be granted to *A.* who has no Right, and is afterwards repealed and granted to *B.* who has Right, *B.* shall sue *A.* to Account for the Profits in his Time in these Courts, for there's no other Remedy. *Godolph. 125. sect. 32.* The Executors or Administrators of any Guardian may be cited to Account by the Stat. 4 & 5 Ann. An Account passed in the Minority of a Person interested is void against the Infant. *Fitz. Nat. Brev. 118. Account. 1 Brownl. 25.* Administration during

## Actions.

7

during Minority is repealed, and another is made Administrator during, &c. and the second Administrator draws the first to Account, and gives him a Release, yet the Infant at his full Age may compel the first Administrator to account again. 1 Roll. Abr. 910. Stat. 22 & 23 Car. 2. c. 10. 1 Jac. 2. c. 17.

Parishioners cannot bring an Action of Account against their Church-wardens, but they may make other Church-wardens; and they shall have it against their Predecessors. Lilly's Reg. 22.

## Actions.

**T**HE Law allows not of many Actions Of Actions.  
for the same Matter, according to the received Maxim in Law, *Nemo bis puniri debet pro eodem Delicto.* Action lies 1 Sid. 88, 201.  
against an Ordinary for placing one in a Seat 1 Lev. 71.  
in an Isle belonging to another, or against 2 Lev. 193.  
any one for a Disturbance in a Seat in a Watf. 298.  
Church, for Dilapidations, \* Simony, lay- 3 Lev. 73.  
ing violent Hands on a Clergyman; (and Salk. 134.  
the Reason why this is fixable here is, be-  
cause the Clerk having *habitu et Tonsu-  
ram*, which made him known, it was an  
Offence to the whole Order. Godolphin's  
Rep. 115. Gibson 10. 2 Inst. 492, 608.  
1 Cro. 753. 13 Edw. 1 Reform. Leg.  
125. 12 Co. 99.) It lies against one for  
A 4 quarrelling



Vide Lindw.  
de Testam. ita  
quorundam  
verb. pias  
causas.

quarrelling in a Church, for Adultery, Fornication, Absence from Church, Non-Payment of a Rate for the Repairs of a Church, or for Books for the Church, or for Subtraction of Legacies left to pious Uses [in which last Case the Judge may proceed against the Executor of his mere Office, or at the Promotion of the Church-wardens of the Parish to whose Poor the Legacy was left]. It lies for hindring the Execution of a Will, or making of an Inventory (the Punishment of which is Excommunication, as in a Cause of temerary Administration) *Fitz. Nat. Brev.* 98. So for Subtraction of Procurations or Synodals by a Rector, &c. from his Bishop or Archdeacon, for Subtraction of an annual Pension going out of a Church, &c. So for uttering reproachful Words, (tho' not defamatory) denoting any Crime out of an angry and malicious Mind, for which no Action lies at Common Law, which is called here Defamation, for a Suit lies not here for Words charging an Offence not punishable here; and in Words defamatory Malice is presumed, in Words reproachful must be proved. *Salk.* 692. Suit lies here for Proctor's Fees. See 4 *Mod.* 254. 5 *Mod.* 238. 1 *Vent.* 165. 1 *Salk.* 333. 1 *Roll. Rep.* 59. 1 *Mod. Rep.* 167. *March* 45. All Artificers must pay to the Rector, &c. of their Parish the tenth Part of their Gain (called Personal Tithes) about *Easter*, for the Year then past, (all Charges first deducted) *Stat. 2 Edw. 6. c. 13. sect. 7, 8, 9.* Also

Also all hired Servants the Tenth of their Wages (deducting the Charge of their Cloaths); on Failure of Payment Action lies; but these Causes are prohibited, except in some Places where such Personal Tithes were payable for forty Years before the Statute. Any Inhabitant of a Parish wherein a Chapel has been antiently founded, and Divine Service performed therein, may (if it be neglected) sue the Rector, &c. in a Cause of Substraction of Divine Service. 22 Hen. 6. 46. Litt. Rep. 30.

An Excommunicate Person cannot bring *Who can't* any Suit, nor a Minor under the Age of *have Action.* Twenty-one, (without his Guardian) nor a Dean and Chapter, the Head, and Wardens and Fellows of a College, Mayor, &c. of a City, or any other Community, without a Syndich lawfully appointed.

## Administration and Administrators.

**A**dministration must be granted 1. to *Administration* the Husband of the Wife's Goods, *how to be*  
2. To the Wife of the Husband's. But *granted.*  
an Administration may be granted to the Father before the Widow, and a Residuary Legatee ought to be preferred before her in an Administration, (with the Will annex'd.) If no Husband or Wife, then 3. To the Children; if the Children die first, 4. To the

## Administration

the Father or Mother ; if no Father, &c.  
 5. To a Brother or Sister of the whole Blood. 6. To a Brother, &c. of the half Blood, for they are all next of Kin in equal Degree ; and if none of the half Blood, 7. To the next of Kin, Uncle, Aunt or Cousin ; and for Default of these, 8. To a Creditor ; for want of all these, 9. To any other Person at the Judge's Discretion ; or he may *ex Officio* grant to a Stranger Letters *ad colligendum bona defuncti*, or may take them into his own Hands to pay the Deceased's Debts. *Wood's Inst.* 317. Administration may be granted during the Minority of an Infant (next of Kin) to any Person, and expires when the Infant arrives at the Age of Twenty-one. It may be granted to one during the Absence of another, but it must be expressed in the Warrant that the Party was then at such a Place *extra Regnum*. It may be granted to an indifferent Person pending Suit in Case of Necessity, as where there are *Bona peritura*. 1 *Vent.* 313. When legally granted it cannot be revoked, but where it is not (as to Stranger when there is a next of Kin) it may ; but if the next of Kin be incapable of taking of it through Attaint or Excommunication, and the Judge grants it to another, if he afterwards become capable, it may be repealed and granted to him. 1 *Show. Rep.* 351. If an Administrator become a Bankrupt, the Judge cannot revoke and grant it to another ; *aliter* if he be *Non compos*, for that is a natural Disability,

Dyer 105,  
166, 256.

Hob. 250.  
1 Brownl. 31.

## and Administrators.

II

ability. *Salk.* 36. Administration was granted to the Grandmother, and a *Mandamus* was prayed to have it granted to the Aunt, but denied. *Salk.* 38. It is void when granted by a wrong Ordinary, and voidable when granted to a wrong Person. 1 *Andersf.* 303. *Owen* 50. 1 *Sid.* 371. It may be granted on Condition, and whatever the Administrator does before the Condition broken is good. It may be granted for a particular Time, as till, &c. 6 *Coke* 18. 2 *Sid.* 50. or for a particular Purpose, as to substantiate Proceedings in Chancery, &c. or to receive a particular Sum, as publick Stock, &c. No Administration shall pass till fourteen Days after the Intestate's Death, nor shall it be granted to a Creditor till the next of Kin have been cited to accept or refuse. *Dr. Parsons.* On Administration granting thereof, Oath is taken to administer the Deceased's Estate duly, by paying his Debts as far as his Estate will extend, to give in a true Inventory, and pass a just Account of his Administration. Bond is also given to the Ordinary in double the Value of the Deceased's Estate to make a Distribution of what remains after all Debts, Funeral Charges, and just Expences of all Kinds deducted. *Vaugh.* 96. *Doctor and Student* L. 2. c. 11. *Golds.* 106. *Cro. Eliz.* 425, 459.

Where an Executor proves a Will and dies intestate, the Judge shall grant Administration of the Testator's Goods left administered by the Executor to another, and this



Cum testa-  
mento annexo.

this is called *Administratio de bonis non Administratis*. Where the Executor refuses to prove, Administration shall be granted with the Will annexed. 1 *Roll's Abr.* 907.

In Case of a temerary Administration, the right Administrator or Executor must shew the Probate or Administration under Seal, and demand the Deceased's Goods, which, if denied, he must be cited to answer Articles at the Promotion of the Administrator, &c.

An Action lies for and against an Administrator, and he shall be charged to the Value of the Deceased's Goods, and no further; but shall not be chargeable with them until they come to his Hands, 1 *Roll's Abr.* 907, 919. If he dies his Executor shall not administer in his stead, but Administration shall be granted anew. *Terms of Law* 12. He may pay his own Debt first, (if it be in equal Degree with others); and if he was indebted to the Intestate that Debt shall be Assets in his Hands. 1 *Roll's Abr.* 922. *Vaugh.* 98.

Case where a  
Widow has Ad-  
ministration  
after having  
barred herself  
of Thirds, &c.  
by Marriage  
Articles.

R. W. dies, leaving a Widow and Brother, the Widow prays Administration: The Brother opposes it, because by Marriage Articles she had barred herself of all Dower, Thirds, &c. She sets forth, that the Jointure which the Deceased was to settle, was not compleated; and also that Part of the Estate he had settled was mortgaged, tho' covenanted to be clear. *Curia* of Opinion, that as the Consideration on which she was to be barred was not compleated,

pleated, the Bar should not prejudice her, And granted Administration to her. In the Prerogative Court, *Witham* against *Witham*.

*Christopher Smith* died, leaving two Children (Infants); *C. S.* the Grandfather and Guardian *ex officio* prayed Administration: Other Creditors appeared, and alleged the Guardian was a Creditor, and prayed Articles; which the Judge decreed. The Guardian moved for a *Mandamus*, which was denied; but they declared if the Children had been seven Years old, and had chose him Guardian, the Judge could not order Articles.

*Case of Articles between Creditors.*

*A. W.* made his Will, and gave the Residue of his Estate to his Wife for Life, afterwards to Trustees for the Use of his Daughter *A.* (Wife of *J. A.*) for Life, without Controul of her Husband; after her Death to her Children, and makes his Wife Executrix; she proves and dies intestate, leaving Goods unadministred; the Daughter *A.* applies for Administration *de bonis, &c. cum Testamento, &c.* as also one of the Trustees; the Judge on hearing Common Lawyers and Advocates decreed it to the Trustees.

*Case of Administration de bonis, &c. cum Testamento.*

See Stat. 31 *Edw. 3.* c. 11. 9 *Co.* 652. 5 *Mod.* 375. *Gibson* 573. 21 *Hen.* 8. c. 5. *Showser* 351. 43 *Eliz.* c. 8. 22 *E* 23 *Car.* 2. c. 10. 29 *Car.* 2. c. 3. 1 *Ja.* 2. c. 10. 17. *Salk.* 251. 30 *Car.* 2. c. 7. 4 *E* 5 *W. & M.* c. 24. s. 4. 12. 1 *Roll. Abr.* 910. *Godolph.* *Orpb. Leg.* 131. *Stat.*

*Adultery.*

*Stat. Westm. 2. c. 19. Carter 125, 136.*  
*8 Co. 133. 1 Vent. 218. Cases in Equi-*  
*ty Abr. 249. 1 Sid. 293, 372, 409. 1*  
*Lev. 186, 78. 1 Vent. 133. 1 Sid. 79.*  
*Co. fol. 39. 1 Sid. 101.*

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*Adultery.**Adultery.*

**I**N Case of Adultery a Woman's own Confession will not prevail. The Rule in the Civil Law is, *revelanti Turpitudinem suam fides non datur*. Adultery is a sufficient Cause of Divorce, but then it must be proved by Witnesses, *1 Roll's Abr. 295. 2 Inst. 488. Godolph. Abr. 115. Degge 156. Salk. 552. Sir Charles Wolseley on Divorce. Godolph. Abr. 471, &c.*

In Causes of Restitution of Conjugal Rites the Adultery of the Plaintiff alledged and proved by the Defendant hinders a Restitution, unless the Plaintiff proves a Compensation or Remission of the Crime. See *18 Levit. v. 20. Taylor's Cases of Consc. 1 Vent 158. 2 Lev. 67. Godolph. Abr. 58. 2 Inst. 435. Can. 109. Hob. 213. Nelson's Rights, &c.*

*Age.*

*Age.*

**F**ULL Age regularly is Twenty-one *Age*.  
 Years. *Co. Litt.* 79. But a Person  
 may do many Things under that Age ; at  
 fourteen he may choofe a Guardian, and  
 consent to marry ; a Woman at twelve may  
 consent to marry, and at fourteen may  
 choofe a Guardian. A Man can't make a  
 Will of Goods before fourteen, nor a Wo-  
 man before twelve ; but it depends wholly  
 on our Courts to determine at what Age  
 fuch Wills may be made. *Swinb.* 43, 218.  
*1 Infl.* 89. *5 Co.* 29. *2 Mod.* 315. *2*  
*Jones* 210.

A Father may by his Will, executed in  
 the Prefence of two Witneffes, difpofe of  
 the Custody and Tuition of his Children (if  
 under Twenty-one Years) during their Mi-  
 nority, to fuch Persons as he fhall think fit,  
*Stat.* 12 *Car.* 2. *c.* 24. Minority of an  
 Executor determines at feventeen, of an  
 Adminiftrator at Twenty-one. If Money  
 be bequeathed to one at his Age of Twen-  
 ty-one, and he dies before that Age,  
 the Money is loft ; *per Finch.* And  
 where one bequeaths a Sum of Money to a  
 Woman at her Age of Twenty-one, or  
 Day of Marriage, to be paid her with In-  
 tereft, and fhe dies before either of thofe  
 Days, the Money fhall go to her Executor.  
*2 Vent.* 342.

*Alimony.*



*Alimony.**Alimony, what.*

**A** Limony signifies that Proportion of the Husband's Estate, which by the Sentence of this Court is allowed the Wife for her Maintenance (upon any Separation from him) *pendente Lite*. In every Cause where the Wife sues the Husband, or *è contrario*, as soon as it appears to the Judge, either by the Answers of the Party principal, or by the Proofs, that the Marriage was solemnized betwixt the Parties, the Wife's Proctor prays that the Husband might be condemned in Costs of Suits and Alimony, and then porrects a Bill of Costs, and prays Alimony to be allowed from the Return of the Citation, *pendente Lite juxta Ratam* of so much *per Week*, &c. leaving a Blank at the Bottom of the Bill for the Judge to insert the Sum to be paid *usque finem Litis*; the Judge then taxes the Costs, and being certified of the Man's Abilities, [for in taxing of Alimony *Consuetudo et Qualitas ejus cui assignatur sunt considerandæ*] he taxes so much for Alimony weekly, &c. *Nisi aliter per nos decretum fuerit*; and the usual Sum is the Third, or at least the Fourth Part of the yearly Value of the Estate, tho' the Man may in any Part of the Suit (to avoid a further Taxation) alledge his Poverty, or that he is decayed

1 Chan. Chaf.  
250, &c.

1 Sid. 124.  
Godolph.

Abr. 50, &c.

cayed in his Estate : The Wife's Proctor may also alledge the Value of the Goods her Husband had as a Portion with her at the Time of Marriage, and the Value of the Goods he possesses, that a Certainty of the Value may appear by his Answers.

*Nelson's Rights*, Tit. *Alimony*. No Alimony can be decreed but by Consent, or *pro Expensis Litis*, unless there be first a Decree for a Separation. 1 *Roll's Rep.*

110. *Cro. Car.* 220. 1 *Edw. 4. c. 1.*

Alimony may be before Divorce ; for tho' the Libel be generally *propter Sævitiã*, &c. because the want of Necessaries is *Sævitiã* ; yet there shall not always be a Separation upon this, but the Man may appear and give Security to maintain his Wife, and so they may cohabit. 1 *Sid.* 109. If the Husband refuses to live with his Wife, or thrusts her out of Doors, the Ordinary will compel him to allow her Alimony. 2 *Brownl.* 18. In this Case she makes an Affidavit to this Effect.

A. B. Wife of C. B. Party in this Cause, maketh Oath, that her Husband, the said C. B. has refused to cohabit with her, and has not so done for the Space of

Day of last past, she the said A. B. did earnestly request him the said C. B. to take her Home and maintain her as his Wife, which he absolutely refused.

B

This

*Allegations.*

This is the proper Court for Alimony, and if the Husband will not obey, the Judge may excommunicate him: Besides, the Remedies are more proper here than by Juries in publick Courts, because Modesty and Decency require Domestick Differences to be privately determined. 1 Sid. 124.

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*Allegations.**Allegations.*

**A**L.L. Allegations shall be signed by an Advocate, otherwise they shall not be admitted. If a Judge refuses to admit an Allegation material and pertinent to the Cause, the Party may be relieved on an Appeal, if he proves the Matter alledged; but if he makes Oath of his Credulity, he shall obtain upon his Appeal without proving the Matter alledged.

When a Proctor to prevent a Cause being assigned *ad concludend'*, says he gives an Allegation, he shall really give it in, and shall swear that he believes he can prove it (if required by the adverse Proctor); and that he gives it in *non Animo differendi Litem*.

*Answers.*

*Answers.*

**A** Libel being given and admitted, the *Answers.*  
 Plaintiff's Proctor is to pray an Answer of the Defendant or his Proctor, who shall be obliged to answer negatively or affirmatively the same Day. And whoever makes an insufficient Answer, which shall be so adjudged, and ordered to be amended, shall pay 13 s. 4 d. for the Delay, but if it be full the other Side shall pay as much. And in examining Witnesses as to what they don't know, they may say, they don't know certainly to depose; but a Party Principal, as to what concerns his own Fact, must directly answer yea or nay; and as to what concerns another Person, what he thinks or believes in his Conscience to be true, viz. *per Verbum (Credo)*; and in the End of every Answer to add these or the like Words.—— And otherwise he does not believe the Contents of the said Position or Article to be true in any Part thereof.—— And in Writing his Answer the proper Terms must be observed.—— Answers and believes, or confesses, &c. and not deposeth and saith.—— And *Note*; those that are called Articles to Witnesses, are called Positions to the Party Principal.—— And where the Position is *Multiplex*, and contains many Branches, enquire of



the Party how much thereof he can confess or believe, and that being wrote, close it with [the rest of the Contents in the said Position he does not believe to be true in any Part]. And when a Party Principal and a Witness are both sworn together, it is best to examine the Party first; for he perhaps will confess many Articles, which, if he does, the Examiner may take less Pains upon the Articles so confessed.—

The Party Principal's Answers are taken by his Proctor, sometimes by the Register *coram judice*, Depositions of Witnesses by the Register; so that the Examiner not knowing what answer the Party has given, must take all possible Pains. If the Party confesses any Position, he must say that he believes the same to be true; if he does not confess——That he does not believe, but denies the same to be true in any Part thereof; but if he says only that he does not believe (without a Negative added) the Answer will not be full, and it will be decreed for fuller Answers. If the Defendant will not contest Suit negatively, he may confess and contest Suit affirmatively, and submit himself to the Judge, and offer the Costs to be taxed by him (which is frequently done in Defamation Causes). If he intends to contest negatively, he must protest against the Nullity, &c. and that he does not believe the Contents to be true, then the Plaintiff repeats his Libel, and the Judge admits it; the Plaintiff then prays that the Party Principal may answer thereto, which

which the Judge decrees accordingly. The Answers of a Community are given by their Syndick, sufficiently instructed and lawfully constituted; and if he does not answer, they may be excommunicated as any other Persons may, by these general Names, The Dean and Chapter, and all and singular, &c.

In a Cause of Jactitation of Marriage the Defendant is obliged to answer the Libel, tho' no Witnesses have been produced thereon; *aliter* in a Defamation Cause.

If the Defendant confesses the Matter deduced in the Libel, and does not the next Court-Day give in some Plea to take off the Force of the said Confession, the Cause shall then stand concluded, and the next Court-Day after Sentence shall pass against him; and whoever does not cite the Party to answer before his Term probatory be out, utterly loses the Benefit of the Answer.

If a Proctor delivers a false Copy of a Libel, to which an Answer is given, the Answer shall be taken. *Godolph. 124. f. 30.*

If the Party has not fully answered the Positions of a Libel, &c. the Plaintiff may alledge the same, and the Judge shall assign a Day to receive Informations whether the Answer be full or not; and if the Respondent shall be adjudged and admonished to answer further, and he refuses so to do, the Matter shall be taken *pro confesso*; but if

he refuses to be sworn to answer, he shall be excommunicated.

The Answer of the Proctor in a Cause of Restitution of Conjugal Rites or Divorce, as to the Marriage, is very necessary.

A Personal Answer is not to be decreed in Causes of Defamation, or other Criminal Causes, before the Publication of Witnesses, *quia per Legem nemo tenetur prodere seipsum.* 1 Sid. 374. When a Person is cited to answer Articles, (tho' he is not bound to answer criminous Positions upon Oath) yet he shall answer the Fame and other Positions not criminous, which if he refuses, it shall be taken *pro confesso*. If the same be confessed or proved, the Party may be examined upon Oath. If the Party is at so great a Distance off that he cannot conveniently attend to be sworn to his Answers, a Commission may be granted to swear him; and if he in his Answers swears to the Position of a Libel concerning his own proper Fact, *quod non credit, &c.* and the same shall be afterwards proved, he may be proceeded against for Perjury.

If a Witness refuses to answer, or not fully answers Interrogatories exhibited by the adverse Proctor, the same may be alleged, and the Judge shall decree him to answer further.

*Apparitors.*

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### *Apparitors.*

**A**N Apparitor shall not be a Promoter; he may be removed for Offences, and decreed contumacious if he afterwards exercise his Office. *Godolph. Abr. f. 87. f. 12.* *Apparitors.*

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### *Appeals.*

**A**N Appeal is a Removing a Cause from an inferior to a superior Court, where by the Sentence is suspended till the Appeal is heard and determined; and all Acts done after the said Appeal, in Prejudice of the Appellant, are to be reversed. And tho' one is excommunicated while the Appeal is depending, he may bring Actions at Law. *4 Inst. 340.* Appeals are from Grievances, Definitive Sentence, or Interlocutory Decrees. — From Grievances are, when the Judge refuses to admit an Allegation, &c. or receive Witnesses, which Appeal ought to be made *in Scriptis* [and not *viva voce*] within fifteen Days. Interlocutory Decrees are so called when they are final as to the Article, Matter or Cause. Appeals are either judicial or extrajudicial; the first is ei-



ther from the Sentence or Interlocutory ; the last is from the Acts and extrajudicial Decrees. All Appeals from a Sentence must be within fifteen Days ; but if it be from an Interlocutory it ought to be made within ten Days by the Canon Law. 24 *Hen. 8. c. 12.* 25 *Hen. 8. c. 19.* Appeals from Grievances in Causes of Correction shall be against the Promoter, and not the Judge ; in which Case the Grievance must be proved by Witnesses ; so must Appeals, by Reason of taxing excessive Costs ; in which last Case the Appellant must shew what is usually allowed by the accustomed Style of the Court, and what is over-taxed in a particular Schedule annexed to the Appeal.

If the Party against whom Sentence is given will appeal, the same may be made *apud acta* (*ore tenus*) ; whereupon the Register is to make the Act, and an Instrument of Appeal attested by Witnesses. An Appeal from an Interlocutory ought rather to be made *in Scriptis* than *apud acta*. If a Judge make a Surrogate or Commissioner *ad partes* to examine Witnesses, the Party may appeal upon any Grievance done by such Surrogate to the Judge himself.—If a Judge threatens a Party to give Sentence against him, he may appeal *a verbis comminatoriis*, which Words must be proved because they don't appear in the Process transmitted.—If a Judge after Conclusion shall delay Sentence for ten Courts, the Party aggrieved may appeal. Unjust Ex-communication

communication may be appealed from, and the original Cause thereupon shall be proceeded in before the Judge *ad quem*, &c. and the Appellant excommunicated by the Judge *a quo*, &c. may have Absolution inserted in the Inhibition by the Judge *ad quem in talem Diem*, &c.—If a Sentence is given in the Absence of a Party, or if Witnesses are not received, or Suit not contested in plenary Causes, the Party against whom Sentence shall be given may on the Day *ad videndam Sententiam* alledge the Nullity thereof for the Causes aforesaid, and pray Revocation, in Default whereof he may appeal.—If the Appellant fail by Desertion, Non-Transmission, &c. the Judge *ad quem* shall confirm the Sentence of the Judge *a quo*, and tax Costs with a Monition. The Appeal shall be shewn to the Judge before any Inhibition be granted. *Can. 97.* The Process shall be duly transmitted to the Judge *ad quem.* *Can. 134.* Appeals brought and prosecuted must be determined within the Compass of one Year, otherwise they are said to be lost. No Party Appellant shall be put into a second Year, unless upon good Causes first shewn and allowed by the Judge.

If the Party appellate knows the Appeal to be just, by Reason of some *Gravamen*, he may confess the same, upon the Return of the Inhibition, and pay the Costs, and pray the Cause may be proceeded upon *coram iudice.* The Party appellate by Reason of a pretended Grievance may consent that

that the principal Cause be proceeded in before the Judge of the Appeal, as well as the Appeal itself, to which the Appellant is obliged to consent.

If the Appellant has served the Inhibition on the Judge *a quo*, and fails to cite the Appellate, or to certify his Citation, and to proceed in the Appeal, the Appellate may appear under Protestation, and obtain a Decree to cite the Appellant to appear and proceed, in Default whereof the Appeal shall be dismissed; if the Judge *a quo* after Inhibition served on the Party appellate, shall do or cause any Act to be done in Prejudice of the Appellant, they shall be proceeded against *in causâ Attemptationis*; and if the Judge be not inhibited within fifteen Days, the Party who has obtained Sentence is to have a Process *ad videndum Sententiam*, &c. and Costs taxed; upon the Return whereof, the Party being cited and not appearing, Costs are to be tax'd, and Sentence put in Execution in Pain of his Contempt. In Tithes Causes Sentence shall be put in Execution as to Costs, notwithstanding an Appeal interposed, or Inhibition issued out, by the 32 Hen. 8. c. 7. But an Appeal lies for an immoderate Taxation *non obstante* the Statute. If an Appeal be remitted to the Judge *a quo*, the Judge *ad quem* may notwithstanding compel the Appellant to pay the Costs by Monition.

The Appellant shall on the Day of Appearance of the Appellate give a Libel, and proceed

proceed in the same Manner as in the first Instance.

The Instrument of Appeal under the Hand of a Notary Publick must be exhibited before the Cause is concluded, in the Presence of the adverse Proctor. No Term probatory shall be allowed for Proof of a Libel of Appeal where it is appealed from a Grievance, but the Cause to stand and be concluded upon bringing in the Process, where the Grievance can appear out of it.

If two Appeals are, one by Reason of some *Gravamen*, before Sentence, and the other from the Sentence, and both are contained in the same Inhibition, and one Libel, and the Appellant obtains in the one, and the Appellate in the other, the one shall not have Costs against the other; but there shall be *Expensarum Compensatio*.

An Appeal from a Sentence of Sequestration suspends the Seizure. *Gibson, Tit. Appeal.*

Action lies against a Proctor, against whom Sentence is given, if he does not appeal.

In the Arches, *Michaelmas* Term 1726. *Case.*  
*Warren* against *Culme*, on an Appeal from *Rate Cause* not  
*Exon*, a *Querela nullitatis* was brought, *a plenary one.*  
 setting forth the Cause, (being a Cause of Rate) and that it was a plenary one, and that there was no Libel, *Litis contestatio, assignatio ad proponendum omnia, concludendum*, on Conclusion; the Judge rejected the



the *Querelas*, and doubted whether it was a plenary Cause.

*Case where  
Appeal from an  
Administration  
granted within  
fourteen Days,  
null.*

In *Trinity Term 1738. Somers* against *Beale*, Administration was granted to a Creditor on the Renunciation of the Widow only, and not the Children; another Creditor appeals from the Archdeacon's Court of *Canterbury* to the Arches, because the Administration was granted within fourteen Days; the Judge pronounced against the Appeal, because it was not the Practice of that Court; and Archbishop *Whitgift's* Injunctions had no Effect but in the Courts for which they were made.

*Case.  
No Nullity in a  
Civil Cause  
where two are  
put in one Ci-  
tation.*

In the Court at *Worcester* two Persons were put into one Citation, one only appeared, and prayed a Libel, and consented to all Assignations, and a Sentence against him. — Objected on the Appeal, that by the Statute the Citation was void, and the whole Proceedings null (two being put into it); the Appeal was pronounced against, and adjudged no Nullity in a Civil Cause.

*Appearance.*

*Appearance.*

UPON the Return of a Citation, if the Person cited (being personally served, or otherwise duly executed) does not appear by himself or Proctor, the next Court-Day the adverse Proctor is to accuse his Contumacy; and the Judge usually re-serves

serves his Pain, and continues the Certificate of the Citation to the next Court, when if he does not appear he is excommunicated. A Person cited, and not appearing, is not contumacious, unless the adverse Proctor has expressly accused his Contumacy. He is said to be contumacious, who being cited does not appear, or monished by the Judge does not obey. If the Party cited appears (tho' the Process be not returned), he shall be dismissed with 6 s. 8 d. Costs, besides 3 s. 4 d. for the Monition in Case the Party Agent will not proceed; and it is sufficient for the Party cited to appear at any Time of the Day; and if the Party Principal appears, all Things must be done by him *sub protestatione non revocandi procuratorium*. Where one is cited into the Prerogative Court to prove a Will, or shew Cause why Administration should not be revoked, the Defendant's Proctor may appear *sub protestatione de, &c.* and alledge Incompetency of the Judge and Court, the Proof whereof will lie on the Plaintiff. An Accountant (where the Interest of the Parties is set out in the Citation) is bound to appear personally, and not by Proctor. No Proctor is to appear in Case of Contempt till Answer, nor then without Leave. If the Party Principal or Proctor, against whom Sentence is to be given, appears not on the Day assigned for the same (Monition being given) it is to be read *in Pœnam Contumacie*.

In

In Causes of Defamation the Defendant shall be cited to see Penance enjoined him, and Monition to pay Costs: If he appears, Penance shall be enjoined; if he does not, to be excommunicated.

*Articles.**Articles.*

**I**N Causes of Correction at the voluntary Promotion of a common Person, it is adviseable for the Promoter to exhibit Articles in Person, and that a Proctor be not named till after Suit is contested.

*Affets.**Affets what.*

**T**HE Goods, &c. which belonged to the Testator at his Death, and which come to the Executors Hands, are called Affets, from the *French* (*Assez*) enough, or sufficient to make the Executor chargeable (as far as the same extend) to a Creditor, Legatee, &c. Affets in the Hands of one are Affets in the Hands of all the Executors. If the Testator's Cattle breed after Death, the Young shall be Affets; So Wool growing, Goods mortgaged and not redeemed, or the Money wherewith they were redeemed; all Debts, &c. recovered by

*Office of Executors, c. 6.*

by the Executor by Action. If an Obligee Wood 323.  
 or Creditor be made Executor, their Debt  
 is Assets. Tho' a Plantation be an Inheritance,  
 yet being in a foreign Country, it is a Chattel  
 to pay Debts, and a Thing that is Testamen-  
 tary. 2 Vent. 358. A Debt released by the  
 Executor is Assets as received. Hob. 59. If  
 Lands are devised to Executors for Years, this  
 is Assets. 2 Brownl. 47. Damages reco-  
 vered in a *Quare Impedit* are Assets; so are  
 all sperate Debts in an Inventory, for they  
 may be had for demanding (unless the De-  
 mand or Refusal be proved); per Holt.  
 Salk. 296. \* Leases are Assets to pay Debts, \* Orph. Leg.  
 notwithstanding the Executors assent to the 206. contra,  
 Devise of them. If an Executor make a *Devastavit* and die, his Executor must  
 make good the *Quantum* of it to the Cre-  
 ditors, if he has Assets from the first Exe-  
 cutor. 1 Chan. Cases 257. If an Execu-  
 tor makes Gain of the Testator's Money,  
 it is Assets. 1 Brownl. 77. If a Feme  
 Administratrix wastes the Assets, and mar-  
 ries, and dies, the Husband is liable to no  
 more than what came to his or his Wife's  
 Hands after the Marriage. Cases in Abr.  
 Equity 60.

In a Cause of Legacy where the Exe-  
 cutor has no Assets except Specialties,  
 which perhaps are desperate, he may tender  
 an Assignment of them; and if it be re-  
 fused, and no other Assets proved, he shall  
 have Costs. In Case of Defect of Assets,  
 Legacies ought to be paid in equal Propor-  
 tion.

Caveats.



*Caveats.**Caveat what.*

**A** *Caveat* is a Kind of Entry or *Memorandum* left in a Book kept for that Purpose in all Registers Offices, to stop Probates, Administrations, Licences, Dispenfations, Faculties, Institutions, &c. from being granted without the Knowledge of the Party that enters it, in the following Form.

*Form of a Caveat.*

Let nothing be done in the Goods of *A. B.* late of *C.* in the County of *D.* deceased, without Notice to *E. Proctor*, for *F. G.* having an Interest, [or the Widow and Relict, or a Creditor, &c. of the said Deceased.]

*Case of Administration granted where Caveat is entered void.*

An Administration was granted pending a *Caveat*. 2. If revocable for that Cause? *Curia*. It is, and the Delegates are Judge of its Validity; and it is in the Civil Law the same as a *Superfedeas* at Common Law: It is an Entry or *Memorandum* by the Clerk to give Caution. 1 *Lev.* 157. 1 *And.* 303. *Owen* 50.

The Courts of Common Law ought not to meddle with the Validity of a *Caveat*; the Canon and Civil Law allow it, *quia veretur damnum futurum*. 1 *Sid.* 371. *Poph.*

## Certificates.

33

Poph. 133. Godolph. Abr. 276. 2  
Brownl. 119.

An Executor after a *Caveat* entred is sworn before a Surrogate, and held good ; and he cannot afterwards be admitted to refuse. 1 *Vent.* 335.

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## Certificates.

**A**FTER a Citation or other Process *Certificate of Citations.* has been served upon a Party, the Mandatory usually makes Oath, and certifies the Day and Place when and where the Party was served ; or if he cannot find him to serve him personally, he must certify this also, in order to have a *viis et Modis*. The Plaintiff may proceed in a Cause, tho' the Defendant object against the Certificate of the Execution of the Citation.

In a Commission *ad Partes*, the Notary *Of Execution* who was made Choice of to execute it must *of a Commission.* draw a Certificate in the Name of the Commissioners, directed to the Judge who granted it, to which the Depositions taken, the Commission, Interrogatories and Substitutions, (if any) are to be annexed, and the Certificate must be sealed up and subscribed by the Notary.

C

*Charitable*

## Charitable Uses.

*Charitable Use.*

**M**ONEY given to a Parish generally, without saying to what Use, shall be decreed to the Poor of the Parish.  
1 *Chan. Cases* 135.

## Churches.

*Resorting to Church.*

**E**VERY Person is obliged to go to some Church or other, and an entire Neglect is punishable in this Court. *Salk.* 176. *Mod. Cases* 188. *Lindow.* 184, 233. *Ref. Leg.* 106. *Sparrow's Coll. Can.* 77, 78, 126, 236, 237, 181. 31 *Rubrick ad finem.* 2 *Roll's Rep.* 438, 455. *Hardr.* 406, 407. \* *March* 93. *Stat.* 5 & 6 *Edw.* 6. c. 1. 1 *Eliz.* c. 2. *Echard's Hist. Eng.* 52. *Can.* 21. 1 *Sid.* 35. *Stat.* 1 *W. & M.* c. 18.

## Church-Wardens.

*Church-wardens when and how to be chosen.*

**C**HURCH-wardens are to be chosen yearly in *Easter Week* by the joint Consent of the Minister and Parishioners, if it may be, in which Case the Minister has only a single Vote; but by Custom he may choose one,

one, and the Parishioners another. 1 *Vent.* 267. *Can.* 89. But a Custom that the old Church-wardens should choose the new ones, was held unreasonable and illegal in *Mr. Arnold's Case* at *Hereford Assizes* 1704. They are Temporal Officers, and have the Property and Custody of the Goods of the Church; and as it is at the Peril of the Parishioners, so they may choose and trust whom they think fit. 5 *Mod.* 325. And the Archdeacon has no Power to elect or controul their Election; he has no more to do than to administer the Oath, and admit the Person chosen.

At a Meeting of a Vestry, (whether select or at large) in order to elect them, the Minister has only a Right to concur with the Majority of the Vestry for the Choice of both; but in Case of Disagreement with the Vestry, he has the sole Right by Virtue of the Canon of naming one for the Year ensuing, to act as, and be sworn a Church-warden, after he had openly disagreed to the Choice of one by the Vestry, unless there be an immemorial Custom for the Parishioners to choose both, in which Case the Custom over-rules the Canon. Wherever, or in what Body of Men soever the Right of electing them lies, or is invested by Canon or Custom, such Men may each Year choose such Persons as please them best to serve that Office, who are not excused or incapable by Law of holding it, tho' those Persons have formerly served that Office, and are willing to serve it again; for  
C 2 they



they being Trustees for the Parish, the Minister (as the Case is) or Inhabitants are the best Judges of his Capacity and Qualifications to serve them. And tho' the Person named by the Minister to serve be entered in the Book, and no Protest made against such his Right of choosing, yet it is in the Power of any one of the Vestry or Parish to enter a *Caveat* against such Person's being sworn, and to bring the Minister's Right on the Canon and the Custom into Question. *Dr. P. 1725.*

*Who are excused from serving.*

A Counsellor or an Attorney cannot be chose, if they are, a Prohibition lies. *2 Roll's Abr. 272.* Church-wardens being Dissenters may act by Deputies. *Stat. 1 W. & M. c. 18.*

*Chan. 111. Their Office.*

*Can. 115, 116, 117, 118.*

In summoning the Parishioners they need not do it from House to House, but a general publick Summons at the Church is sufficient, and the major Part of them that appear will bind the whole Parish. *1 Mod. Rep. 236.* At every Visitation they shall present the Names of all those that behave disorderly in the Church, and all Offences presentable by our Laws relating to the Church, Parson or Parishioners; and that not only on their own Knowledge, but on common Fame: They shall not be sued for presenting, nor be bound to present above twice a Year, (but may at any Time). The old ones shall make their Presentments before the new ones are sworn; and when they present any Crime they are not bound to prove, for it is presumed they do it with-  
out

out Malice, and that the Crime is notorious. They shall collect the Offertory, and with the Minister dispose of it. By Stat. *Dr. Chamberlain's State of England, Part 2. p. 28.* 13 & 14 Car. 2. they shall sign Briefs, and attest what is collected. Stat. 4 & 5 Ann.

c. 14. At the End of the Year, or in one Month after, they shall give an Account of their Receipts and Disbursements to the Minister and Parishioners, and deliver what remains in their Hands to them, or to the new Church-wardens ; and on Refusal may be presented at the next Visitation by the new Church-wardens ; or any of the Parish that are interested may by Process call them to an Account before the Ordinary ; and if they have disbursed more than they have received, their Successors shall pay what is due to them, and account it among the Disbursements at the End of the Year. *Can. 89.* *Mod. 194. 1 Roll's Abr. 121.*

In the Delegates, Michaelmas Term *Cafe.* 1729. *Sepe* against *Prudence* and *Bond.*—*Out of Office cannot sue.* Church-wardens out of their Office sue for a Rate made by them in the Year of their Wardenship ; Defendants say they being out of their Office could not sue, and Sentence was given in the inferior and Arches Courts for the Church-wardens ; but the Judges Delegates were unanimously of Opinion, that they could not sue when out of Office, so reversed the former Sentence, and condemned the Church-wardens in Costs.

## Citations.

*Citation what.*

A Citation is a Summons to appear before an Ecclesiastical Judge ; it contains 1. The Name of the Judge and Style of the Court. 2. The Defendant's Name. 3. The Day and Place of Appearance, (*viz.*) the third Day after Service, if it be a Court-Day, otherwise on the next Court-Day following, or more or less Time according to the Distance of the Place of the Defendant's Abode. 4. The Plaintiff's Name. And 5. The Cause. It either contains a peremptory Command to appear, or is mandatory and inhibitory, where the Defendant is not only cited to appear, but the Judge before whom the Cause lately depended is forbid to proceed any further, or else they are intimatory; as where Executors cite all the next of Kin to see a Will proved, &c. intimating that if they do not appear, &c. the Judge will proceed, &c. There are also general Citations, as where the Defendant is cited to attend the whole Proceedings; or special, as where he is cited to do some particular Act, &c. If the Defendant absconds, so that the Citation cannot be personally served upon him, a Citation *viis et modis* goes out, a Copy of which is to be affixed on the outward

*Inhibitory.*

*Intimatory.*

*General.*

*Special.*

*Viis et modis.*

ward Door of his House or last usual Place of Abode, or on the Church Door of the Parish wherein he inhabits. *Gibson* 1043. These Citations in the Courts of Arches and Prerogative are directed to all and singular Clerks and literate Persons, whomsoever and wheresoever in and throughout the whole Province of *Canterbury*; in other Courts——To all, &c. in and throughout the whole Diocese [Deanry or Archdeaconry] of *L.* but in Requisitions the Judge directs to one or more specially named and appointed. In Monitions for Payments of Costs, &c. *sub pœna*, &c. the Direction is——To all and singular Rectors, Vicars, Chaplains, Curates, Clerks and literate Persons whomsoever, &c. All Citations in the Prerogative Court go out in the Archbishop's Name, to appear before the Right Worshipful *J. B. L. L. D.* Master Keeper or Commissary of the Prerogative Court of *Canterbury*, or his Surrogate. If it be a Decree from that Court, the Party is to appear at a certain Day and Hour. Peers of the Realm are desired to appear by Letters missive from the Judge. A Minor must be cited to appear lawfully, viz. by his Guardian lawfully assigned (*quia non est habilis standi in judicio in propria Persona*). A Body aggregate (as a Company) must be cited to appear by their Syndick, and the Citation served on the Wardens. A Citation against a Dean and Chapter is to be served by fixing it for some Time on the Door of the Chapter House. That against

*To whom directed.*

*Requisitions how directed.*

*Monitions sub pœna, how.*

*Prerogative Citations.*

*Decrees.*

*Peers how*

*cited.*

*Minors how.*

*Company how.*

*Against a Dean and Chapter.*

*Jones* 187.



*Master and  
Fellows of a  
College.*

*Mayor, &c.  
of a Town.*

*A Person be-  
yond Sea.*

*Citation with  
Intimation for  
Faculties, &c.  
how directed.*

*Citation out of  
the Diocese.*

*Dr. Cofins,*

*pt. 1. c. 8.*

*Clark 11. c. 8.*

*Lindw. de ju-  
diciis.*

*Can. 94.*

a Master and Fellows of a College on the Gates of the College. That against a Mayor, &c. of a City on the Door of their Guildhall, or on the *Exchange*.——A Decree against a Party beyond Sea must be fixed on one of the Pillars of the *Royal Exchange*.——A Citation with Intimation in a Seat Cause, or for Faculties for Vaults, &c. goes out against the Minister, Churchwardens, Parishioners and Inhabitants of the Parish of *A*. in special, and all others in general, having or pretending to have any Right, Title or Interest, in or to the Seat, &c. and is directed as Monitions, with this Addition [and more especially to the Rector, Vicar or Curate of the Parish of, &c.] and is to be read in the Church on a Sunday or Festival in the Time of Divine Service.——None shall be cited originally into the Arches out of another Diocese without Leave of the Bishop, except on an Appeal, or in other Cases reserved in Stat. 23 *Hen. 8. c. 9.* Any Judge offending shall be suspended three Months.——If one is cited out of his Diocese and appears, and Sentence is given, or if he submits himself to the Suit, he shall have no Benefit by the Statute, nor will a Prohibition be granted; if he would have the Benefit of the Statute, he must pray a Prohibition before Sentence, otherwise it will be too late.——If one is cited within the Diocese, though not an Inhabitant, but only comes there to trade, &c. this is not within the Statute. *Gibson* 1048. The Substraction of Tithes is local, and

and must be sued for before the Ordinary of the Place where the Wrong is done; *aliter* in Cases transitory, *ubi forum sequitur Reum*. Salk. 549. 1 Roll's Rep. 328. Cro. Car. 97. 13 Co. 4. 2 Roll. 448. 3 Mod. 211.

In a Citation in a Cause of Contract an Inhibition must be inserted to forbid the Defendant to contract or solemnize any Marriage with any other Person, *pendente Lite*; if the Plaintiff suspects any Person, he may cite him [or her] in special, and all others in general: After Sentence given in these Causes, a Monition goes out against the Defendant to cause him [or her] to solemnize the Marriage with the Plaintiff before such a Day *sub pœna, &c.*—If a Person so inhibited from marrying do marry pending Suit, he or she may be cited to answer Articles of Contempt. If the Defendant, after Citation and *Viis et modis* returned, and Excommunication decreed and denounced, still absconds, a Decree shall issue against him to appear *singulis Sessibus*, to see a Libel given, &c. Witnesses produced, &c. and the Plaintiff may proceed to Sentence in Pain of his Contempt.

*In a Cause of Contract.*

*Monition to solemnize Marriage*

*Decree to appear singulis Session'*

## Codicils.

**A** Codicil est voluntatis nostræ justa Sententia de eo quod quis post Mortem suam fieri vellet absque Executoris Constitutione. *Codicil what.*

## Commissions.

*tione.* When one has made a Will, and would alter Part of it, he may do it by adding a Codicil; this is as much used as a Will, for most Wills of Consequence have Codicils annexed; and it is so far from revoking that it confirms the Will, and amounts to a new Publication. A Man may have twenty Codicils tho' but one Will. *1 Show, 550. Stat. 29. Car. 2. against Frauds. &c.* A Codicil may be added by Parol to a Will in Writing; and this shall be put in Writing and affixed to the Will. *Hill 22. Car. 1. and Pasch. 23. Car. 1. in B. R.*

*Case.*  
*Of the Number*  
*of Witnesses to*  
*them.*

If any pecuniary Legacies given by a Will, or any other Part thereof be diminished or revoked by a Codicil thereto annexed, such Codicil must have three subscribed Witnesses thereto; *è contra* if any additional Legacies are only given thereby, two Witnesses are sufficient. *Per Serjeant G.*

## Commissions.

*Commission*  
*what.*

A Commission is a Power given from a Judge to one or more, sealed and directed to him or them to dispatch Business in Parts remote from his Court; the Manner of obtaining it is thus.—The Proctor of the Party must alledge that his Client has several necessary Witnesses to prove the Contents of his Libel, &c. but that they live in Parts remote, so that they cannot

*How obtained.*

not attend to be examined here without great Expence; wherefore he prays a Commission to be decreed, directed to two or more Clergymen on Behalf of his Client, and also two or more on Behalf of, and to be named by, the adverse Party, jointly and severally to sit in such a Place, in order to examine the Witnesses to be produced before them on such Days, with Power (if need be) of continuing and proroguing the Time and Place, taking to themselves some Notary Publick indifferent to the Parties, and that the Commission with all the Proceedings had thereon be transmitted by such a Day; and that the Term probatory be continued to the Return of the Commission, and the adverse Proctor admonished to be there present at the Time of the Execution (if he thinks it his Interest); if he does not attend, all Proceedings must be had *in Pænam contumaciæ*; if he cannot attend, he may substitute another. Where the Witnesses live out of the Judges Jurisdiction, the Office of the Judge where they live must be implored in the Nature of Letters of Request; this is called *Commissio sub mutua vicissitudinis obtentu*; the Manner of obtaining it is thus: The Proctor alledges that he has some necessary Witnesses, &c, but that they live in the Diocese of L. by Reason whereof they cannot be compelled to appear in this Court to be examined; wherefore he prays a Commission or Requisition, directed to the Right Reverend, &c. and his Vicar General, jointly and severally in

Aid

*Commission sub mutua. Letters of Request.*



## Commissions.

Aid of Law to receive, admit, swear, and examine the said Witnesses in any Place, and on any Day before, &c. and concludes, for which you shall receive the like Favour from us if at any Time required.—All Commissions for Examinations may be decreed at the same Time that the Matter is admitted, but the Proctor not to be obliged to take them out till the Party's Answers are given in (if insisted upon); and the Place of speeding of it to be then named, and must be returned within the Term probatory. Such Commissions may be renewed shewing Cause. Commissioners delaying or neglecting to return a Commission, may be cited to answer Articles for the Contempt upon an Allegation of the Proctor; if the adverse Party deny such Allegation and fail in the Proof, he shall be condemned *in Expensis retardati Processus*. There are various Kinds of Commissions besides those, as for taking a Person's Answers, for swearing an Executor or Administrator to a Will, &c. or to an Inventory for taking Bonds, and for Absolution; also Commissions directed to two or more Appraisers to value the Deceased's Goods, and to inspect his Papers, which is called a Commission of Appraisement.

*Commission of Appraisement.*

*Case.*

In the Cause between *Best* and *Best* in the Prerogative, *Trin. Term 1727. P. B.* died intestate, leaving a Widow but no Children; the next of Kin prayed a Commission of Appraisement: The Judge ordered the Charges thereof to be paid out

## Compulsories. Conclusion.

45

out of the Estate, and made it a standing Rule.

In *Michaelmas* 1730, Lord *Londonder-Cafe*.  
ry's Executors moved for a Probate of his *Where denied*.  
Will; the Creditors prayed a Commission of Appraisement, which the Judge decreed; afterwards a *Mandamus* was granted, and the Judge obliged to grant a Probate without an Inventory.

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## Compulsories.

THE Plaintiff having desired his Wit-*Compulsory*.  
nesses to appear, and tendered them  
*Expensas viaticas*, he is to pray a Compul-  
sory or *Viis et modis* (if need be); but then  
the Proctor must take Care that his Term  
probatory be prorogued.—The Witnesses  
must have such Expences taxed by the  
Judge, who shall compel the Producent to  
pay them before Examination. If upon a  
Commission Witnesses do not appear, the  
Commissioners may decree a Compulsory.

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## Conclusion.

ON the Day assigned to conclude, the *Conclusion*.  
Plaintiff's Proctor prays the Judge to  
conclude with him, which done he prays a  
Day and Place, which is usually some in-  
different

different Day and Place named by the Judge to be informed. When Matter is alledged foreign from the principal Cause, and Proof thereof made, and the Judge assigns a Day *ad audiendum voluntatem suam*, the Cause as to the Matter is concluded.

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## Contempt.

Contempt.

**I**N Causes of Contempt, if the Party upon his Examination or Answer confesses the Fact, the Promoter may alledge the same and pray Sentence. Articles of Contempt run in the Judge's Name thus : In the Name of God, Amen. *W.* and *J. B. &c.* Vicar General, *&c.* do object, give and administer to you *A. B.* of, *&c.* certain Articles or Interrogatories concerning a Contempt of us, and our Jurisdiction of our mere Office [*or at the Promotion of C. D. &c.*]; and the Judge usually assigns some Proctor of his Court as a necessary Promoter of his Office, and he shall give Articles, and it shall be proceeded in summarily, and the Party shall be produced upon these Articles if he be present in Court.

Contracts

## *Contracts of Marriage.*

**W**HERE a mutual Contract *per verba* Of Contracts. *de presenti* can be proved, this Court will compel the Parties to solemnize the Marriage, tho' either or both of them are married elsewhere, and have celebrated the last Marriage *in facie Ecclesiæ*, and have had Children (and such Children will be deemed Bastards). The Statute of 2 & 3 *Edw.* 6. reduces our Laws relating to Contracts to the State and Order which were used here before the Statute of *Hen.* 8. which was, that a Contract proved by two Witnesses only was sufficient, and used to be confirmed by our Judges. See *Trin.* 28. *Hen.* 8. *Dyer* 13. *Conset pt.* 6. c. 1. s. 12. in his whole Chapter of Contracts never makes Evidence in Writing any necessary Part of the Proof of a Contract; and lays down expressly that a Proof by two Witnesses (at the fewest) who are all without Exception, is sufficient to dissolve a subsequent Marriage lawfully solemnized and consummate, and confirmed by daily Cohabitation together, in exact Agreement, with the Words of the Statute of 32 *Hen.* 8. (tho' he adds that two are the fewest in such a Case), and in *sect.* 14. he says, if the Plaintiff proves a Contract by one sufficient Witness (who is without all Exception) and doth  
 prove



prove a Treaty by others, or proves an Acknowledgment by two Witnesses (the Parties being present) ; or if he proves a Contract for a future Marriage by two, and a Treaty by the same, or other Witnesses, or proves an immediate Marriage by two, and these Proofs are afterwards taken away by lawful Exceptions unknown to the Party producing them ; or if the Proofs are difficult (the Witnesses not being without all Exception), or if by Reason of a former Contract or Marriage, or by a subsequent Solemnization of a Marriage made *pendente Lite*, here the Judge (tho' he has given Sentence for the Defendant) usually condemns him in Costs.

See *Can.* 102. *Readings on the Stat.* Vol. 4. 194, &c. *Salk.* 438. 1 *Sid.* 13. *Fitz. Nat. Brev.* 41. *Cro. Eliz.* 79. 5 *Co.* 51. *Mod. Cas.* 155, 6. *Fortescue de Laudibus*, &c. *Temp. Hen.* 6. c. 21, *Frynge's Case*.

## Costs.

Costs.

**I**N *Taxatione Expensarum*, tria debent concurrere. 1. *Judex debet taxare eisdem.* 2. *Victor debet jurare se illas fecisse.* 3. *Judex debet delato Juramento ferre Sententiam super eisdem.*

Execu-

Executors, Guardians and Trustees, are <sup>2</sup> Roll's Abr. usually exempt from Costs, or awarded Costs <sup>299.</sup> out of the Estate in their Hands. These <sup>Cases in Eq.</sup> Courts may tax Costs where there is only <sup>185.</sup> Fame, so where the Plaintiff has *Causam litigandi*.

In Causes of voluntary Promotion, if the Fame and not the Crime be proved, so that in the Sentence Purgation be decreed, the Promoter shall have his Costs; for the Defendant by denying the Fame, has obliged the Promoter to be at some Charges in proving it.

After Transmission of the Proceedings in an Appeal exhibited (which is to be before Conclusion) the Judge *ad quem* must tax the Costs of the Transmission, and grant a Monition (if need be).

If the Actor or *Reus* alledge any exceptive Matter from the Cause, and the Allegation is admitted and a Term probatory assigned, so that the original Cause is delayed, the Proponent failing in Proof of his Matter shall be condemned in *Expensis retardati Processus*.

When an Action is brought by a Wife here, and she obtains Sentence, the Husband may release the Costs. *Per Dr. A.*

*Criminal Causes.*

*Crimes Ecclesiastical.*

**C**ORRECTION and Punishment of Ecclesiastical Crimes belong *de jure communi* to the Bishops ; for publick and notorious Crimes, as Fornication, &c. Publick Penance must be inflicted on the Party to be done *in facie Ecclesie*.

Artic. Cleri.  
9 Edw. 2. c. 2.

The Method of proceeding in these Causes is Threefold, by *Inquisition, Accusation* and *Denunciation*.

A Person suspected of a Crime may be convened before the Ordinary *in Anima salutem*.

Church-wardens are to present upon Oath at the Visitation all those that are noted or suspected of any Crime within their Parishes, upon Pain of Excommunication. If a Rumour be spread against any one by infamous or malicious Persons, the Presentment must be special and particular, *viz.* such a Report of Fame was spread by such Persons, &c. *Can. 113.*

A Person presented by Church-wardens may be put to Purgation without giving Articles or producing Witnesses, tho' he deny both Fame and Crime.

*Custom.*

*Custom.*

OF every Custom there are two essential Parts, Time out of the Memory of Man, and continual and peaceable Usage without lawful Interruption. *1 Inst. 110. b.* In pleading a Custom you must alledge that in such a County, &c. there is, and Time out of Memory of Man, hath been such a Custom used and approved therein. If a Custom be not denied these Courts shall proceed, but if it be, a Prohibition will lie *non propter Defectum Jurisdictionis, sed Triationis.* *Salk. 334. Vide Preface to Davis's Reports. Salk. 203. Doctor and Student, l. 1. c. 7. 10. Davis 1. 32. Coke Lit. 33. b.*

By the Custom of London a Freeman's — of London Widow may require a third Part of his Personal Estate (after Debts and Funeral Expences paid), and his Children another Third, and he may by Will give away the remaining Third. If no Children, the Widow has one Half; but if he has no Will, Administration must be granted to the Wife, and she shall have one Third by Custom, one Third to be divided among the Children, and the remaining Third among the Wife and Children. A Freeman by his Will cannot prejudice his Wife as to her Third, yet he may give it away in his Lifetime.



time. And if he advance any of his Children with any Goods, it shall bar them of any further Demand, unless he under his Hand or by Will declares, that it was but in Part of Advancement, then the Child so partly advanced shall put his Part in *Hotchpot* with the Widow, and have a full third Part of the whole, accounting that former Money advanced, as Part thereof; and this is called *Collatio bonorum*. 1 Inst. 176. b. The Custom does not extend to Batchelors (Freemen), but that they may devile as they please; and in Case of Intestacy, Distribution must be made according to the Stat. of 22 & 23 Car. 2. c. 13. By a late Statute 11 Geo. 1. c. 18. a Freeman may by Will devise as he pleases; but if he dies intestate, Distribution must be made according to the Custom.

*J. W.* Citizen of *London*, dies intestate, leaving a Widow and Half Brothers; now the Widow has three Fourth Parts of the whole: She is to have a Moiety by the Act, and the Custom is preserved without any prejudice; so that if by the Custom she should have the three Parts, she shall enjoy them (any thing in the Act notwithstanding).

The Design and Scope of the Act was not to set a Widow of a Freeman before any other, but only to preserve her Rights, which (if greater than others)) to continue.

York, &c.

Where there are any Customs, as in *York*, &c, there the Act does not take Place, but leaves it as it was before when the Widow had

had a Moiety ; which Customs being preserved, let her take her Choice to stand by what the Act (as to Women in general) determines, or what shall appear to be the Custom of *London* : If she waves the Custom, the Act will take Place, if she does not, she can pray no further Benefit by the Act ; for how is the Custom observed, which the Scope of the Act is to preserve, if the Sum (which by the Custom is allotted to the Widow) is either augmented or diminished ? And further, she can't have Portion on both Accounts, as well Custom as Act ; for the Act takes Place only where no Custom has obtained :

*Provided, &c. shall not in any wise prejudice, &c. any Custom (i. e. shall not lessen any Portion due by Custom, as that at Worcester, which is for the Widow to have Worcester. two Thirds, the Children one, whereas the Act prescribes one Third to the Widow, and two to the Children : Now here the Widow shall not be abbreviated by this Act).*

*Any Thing contained contrariwise notwithstanding* (that is, those Proportions or Quantities which are specified in this Act shall not prevail in any City where a greater or lesser Sum, than what is here prescribed, is allowed).

The Act meddles not with one Moiety, which is due by Custom, and therefore extends only to that Part which is not subject to the Custom, (*viz.*) a Moiety of the Residue.

The Scope of the Act is to make Intestates Wills, and to dispose of that Part which they could have given at their Pleasure to whom they would, and have not done it. Every Citizen of *London's* Will, as to such a Share, is made to his Hands; the Law of the City makes it so; as *W.* died intestate only as to a Part.

As to one Moiety (there being no Child) *W.* dies a Testate, and dies intestate only as to the other, which of Necessity must fall under the Cognizance of the Act (or else the Act is in vain); if so, one Moiety of the Residue shall be the Wife's.

Where there is a Wife and Children, and all provided for by the Custom, the Intestate's Part shall not be wholly given to the Children, but the Mother shall be concerned equally, and have a share, which shall be equal proportionably to what the Custom gave them both; if so, then sure the Widow who has the Administration, and to whom the Law shews all imaginable Favour, and who is at the Trouble of getting in the Estate, shall be in as good a Condition (when Persons of a remote Degree contest with her) as when the Deceased's Children are Contestants.

*Select Vestries  
by Custom.*

By Custom there may be Select Vestries, or a certain Number of Persons elected, who shall have the Government of the Parish, to make Rates, and to take the Churchwardens Accounts. 1 *Mod.* 194 See Stat. 17 G. 2. concerning Vestries.

*Defamation.*

## Defamation.

**D**efamation ought to have three Incidents. (1.) That the Matter be merely Spiritual, and determinable in those Courts. (2.) That it concern a Matter merely Spiritual; for if it concerns any Thing determinable at Common Law, our Judges shall not have Cognizance of it. (3.) Tho' the Thing be merely Spiritual, the Person defamed cannot sue here for Damages (the Suit being here only *pro salute anime*); but he may recover Costs here. 2 Lev. 155. 22 Edw. 4. 20. Artic. Cleri et Circumspete agatis. 1 Lill. Reg. 800.

Regularly a Cause of Defamation ought not to be brought after one Year since the Words were spoke, unless the Plaintiff was beyond Sea, or in a remote Place when spoke.

In these Causes the Defendant may alledge (without Process) Defamatory Words spoken against him by the Plaintiff, and the Causes are to proceed together; and if such Allegation be proved, no Penance shall be enjoined nor Costs paid: This is Reconvention, but the Judge may *ex officio* punish both.



## Defamation.

Words not Defamatory, yet spoken maliciously and reproachfully, are punishable here ; *aliter* of complicated Words (*as thou art a Whore and a Thief*) for Action at Law will lie for a Part, and a Prohibition will lie for the whole. 1 Vent. 7, *Herbert v. Morrit.*

Words of Passion are not Defamatory, being regarded by the Hearers no more than the Words of one *Non Compos* ; *ira furor brevis est.* Salk. 692. *Smith v. Wood.*

A Writer of a scandalous Libel against another may be sued in a Cause of Defamation, by adding *Tenoris Scheda presentibri annexæ, quam pro hic lect. et insert. habus petiit.*

If in a Cause Exception be taken to the Persons of the Witnesses, containing scandalous Matter which can't be proved, the Witnesses so defamed may proceed against the Party principal or Proctor that exhibited the same in a Cause of Defamation.

A Person prosecuted unjustly in a criminal Cause by a voluntary Promoter, or being presented by Church-wardens, nothing being proved against him, may proceed against the Promoter or Presenter in a Cause of Defamation.

*Dilapidations.*

### *Dilapidations.*

**A** Rector, &c. endowed, leaving Dila-<sup>Dilapidations.</sup>pidations, his Goods shall answer in such Proportions as the Revenue of the Church will bear. Dilapidations shall be judged only by credible Persons upon Oath. Under the Name of Dilapidations are com-<sup>What.</sup>prehended Fences, Hedges, &c. as well as decay'd and ruinous Buildings; and it has been particularly adjudged, that the felling of Wood and Timber by an Incumbent, otherwise than for Repairs or Fewel, is Dilapidations, from which he may be restrained by Prohibition during his Incumbency, and for which he or his Executor is liable to be prosecuted after he ceases to be Incumbent. The Ordinary has a Right to take Cognizance of them in the Incumbent's Life-time by voluntary Inquisition, or upon Complaint made to him, and to enforce Reparation by sequestering the Profits, [or some Part of them, rarely more than a Fifth, which is to be received by some trusty Person, and applied towards Repairs, and the Over-plus returned to the Incumbent] or by Ecclesiastical Censures, even to Deprivation. *Gibson* 789. 1 *Roll's Rep* 335. 3 *Keb.* 619.

A Curate or his Executors are not suable for them.

By

*Dilapidations.*

By the Statute of 13 *Eliz. c. 10.* no Clergyman can sue his Predecessor or Executors, but only for so much of the Dilapidations, as have happened thro' his Default. *Watson's Incumb. 176.*

*A View to be made.*

The Plaintiff before Suit shall cause the Defects to be viewed by Workmen, who shall make an Estimate of the whole Charge, and set their Hands to it; the Defendant may also have Workmen to inspect them, and the Plaintiff shall be admonished to permit the same; or the Judge may if he pleases have a View taken by Workmen appointed by him for his own Satisfaction.

There are many Reasons which excuse the Rector, &c. from Condemnation in Dilapidations; as (1.) Where the Predecessor died insolvent. (2.) Where the last Incumbent (pending a Suit against his Predecessor) died (without Executor), or so in Debt that none would administer. (3.) Where, on a Suit against the last Incumbent's Executors, they were freed by Sentence on *Plene administravit* pleaded, and the Insufficiency of the Goods; or where after Sentence against them the Executors died in Execution, leaving not Goods enough, and that he has used all possible Diligence to recover Dilapidations, and has laid out according to the Value of his Living a sufficient Sum in repairing the Things mentioned in the Libel.——The sooner the Ruins are inspected after Induction the better.

*Distribution.*

### *Distribution.*

**B**Y Stat. 22 & 23 Car. 2, c. 10. the *Distribution*. Ordinary may order a Distribution of what remains after Debts and Funeral Expences paid, viz. one Third to the Intestate's Wife, the rest among his Children, and such as legally represent them ; if any of them are dead, other than such Children (not Heirs at Law) who shall have any Estate by Settlement of the Intestate in his Life-time, equal to the other Shares. Children (other than Heirs at Law) advanced by Settlements, or Portions not equal to the other Shares, shall have so much of the Surplusage as shall make all their Shares equal, and the Heir at Law shall have an equal Share with the others, besides what he has by Descent or otherwise. If no Children or legal Representatives, one Half goes to the Wife, the rest among the next of Kin in equal Degree, and their Representatives.——But no Representatives to be admitted among Collaterals after Brothers and Sisters Children ; if no Wife, all goes to the Children ; if no Child, to the next of Kin and their, &c. in equal Degree ; and no Distribution to be made till *after one Year* from the Intestate's Death.

If



3 Mod. 58. If *A. B.* are next of Kin, tho' *A.* dies  
 Nelson's Lex *within the Year*, and before Distribution,  
 Test. 24. yet his Part shall go to his Executors, &c.  
 Moor 220. for the Act vests an Interest in him upon  
 1 Roll's Abr. the Intestate's Death, and the *Proviso* for  
 31. a Year, is only to save the Administrator  
 Cro. Car. 202. from a *Devastavit* by not dividing till he sees  
 1 Show. 1. 25. the Estate.  
 Gibson 577.

And every one to whom any Share is  
 2 Vent. 317. allotted shall give Bond with Sureties, that  
 if Debts afterwards be made to appear, he  
 will refund *pro Rata*.

See Stat. 31. And by Stat. 1 Jac. 2. c. 17. if after the  
 Edw. 3. c. 11. Father's Death any of his Children die in-  
 Sid. 409. testate (without Wife or Child) in the  
 Show. 351. Mother's Life-time, every Brother and  
 Sister, and their Representatives, shall have  
 equal Share with her; the Father surviving  
 has all. Salk. 251.

Where there are Grandchildren of an  
 Uncle and Aunt, and a Son of an Uncle  
 living (all their Antecedents dead) the  
 Grandchildren can't come in *Jure Repre-*  
*sentationis*, being in a Degree more remote  
 than Brothers and Sisters Children, beyond  
 which no Representation takes Place, and  
 then they are out of Equality of Degree.  
 1 Lill. Reg. 660. Salk. 250. Tho. Raym.  
 496. The Aunt is not intitled to Distribu-  
 tion with the Grandmother, the last being  
 the nearest of Kin. Salk. 251. The half  
 Blood is intitled to Distribution with the  
 whole Blood. W. Jones's Rep. 209.

*A.* had three Brothers, one died leaving  
 three Children, another two, and the third  
 five; then *A.* dies intestate. Resolved  
 that

that Distribution should be *per Capita*, and not *per Stirpes*, and all should have equal. *Cases in Eq. Abr.* 249.

Where a Man makes a Will, and a Stranger Executor, and gives him a Legacy, but does not dispose of the Residue, he dies intestate as to that, and it shall be distributed among the next of Kin. 2 *Vern.* 361, 676, 634. 2 *Mod. Rep.* 101. *Cases in Eq. Abr.* 244, 249.

Divorce.

THE sole Confession of the Parties is *Divorce*. not sufficient for a Divorce, there must be Proof by Witnesses.—There are two Sorts of Divorce, a *Mensâ & Thoro*,<sup>How many Sorts of.</sup> and a *Vinculo*, &c. The first is in Cases of *Adultery, Cruelty, &c.* in which the Marriage having been originally good is not dissolved, nor does it bar the Wife of Dower, or bastardize the Issue, but intitles her to *Alimony*. The second annuls and dissolves the very Bond of Matrimony, as in Cases of *Precontract, Consanguinity, or Affinity* within the Degrees prohibited; also of *Impuberty* and *Frigidity*. Where the Marriage itself is merely void *ab initia*, and the Sentence of Divorce only declaratory of its being so. In this second Case, the Wife is barred of Dower, her Children illegitimate, and the Persons so divorced may marry

marry any other. After Divorce *a Mensâ, &c.* the Parties shall not marry any other during each other's Life; nor shall the Sentence of Divorce be given till they have given Security to the Court that they will not marry. *Grey's System.* Where a Man is divorced in a Cause of *Frigidity*, it is prohibited by such Sentence that he shall not marry again, and if he does he is held a *Perjurer* and an *Adulterer*. 2 Leon. 169. In Causes of *Frigidity*, the Man must be inspected by *Physicians*, and the Woman by a Jury of *Matrons*; *et si Persona sit inhabilis Matrimonium dissolvatur.*

Separation from Bed and Board is for Peace Sake till Opportunity of atoning.—By Divorce *a Thoro, &c.* they are not shut from all Converse with one another, they may return to mutual Embraces again.

In Causes of Divorce for Adultery, if the Defendant proves that the Plaintiff has also committed Adultery, he (the Defendant) shall be dismissed *quoad Petita in Libella, et hoc est Compensatio Criminis.*

## Evidence.

Evidence  
what.

**E**vidence generally speaking is used for some Proof either by Witnesses upon Oath, or by Writing. One may be allowed to give Evidence upon Hearsay to confirm another's Testimony. Probable Evidence

## Excommunication.

63

Evidence is of little Weight against positive Oaths.

If a Man be over Sea, or dead, the Party shall be admitted to prove his Hand by Witneses, or comparing it with other Writing. See *Law of Evidence*, p. 2. ca. 5.

Where either Party would produce any Writing, and give it in Evidence, it must be exhibited with an Allegation, and so proved. The Hand of a Party signing may be proved by Letters, or other his Hand-writing, which are to be exhibited by Allegation; and being proved, Proctors or approved Writers are to be assigned by the Judge to compare the same, who are to give Verdict thereon.

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## Excommunication.

**T**HERE are two Excommunications, *Major* and *Minor*: The first *Excommunication what.* is where one is excluded from the Communion of the Church in its sacred Rights and Privileges, and from the Company of the Faithful; so that 'tis Excommunication to keep Company with him. The second *Minor.* is where one is excluded only the Sacraments and Divine Worship, and is generally passed upon obstinate Persons for not appearing on a Citation submitting to do Penance, &c. No Excommunicate Person shall



*The Inconveniences an Excommunicate lies under.*

shall be suffered to come into a Church, nor if he die under Sentence to have Christian Burial; he is disabled to do any judicial Act, as to sue, &c. be a Witness; and if he does not submit in forty Days the Bishop shall signify his Condition to the Court of Chancery, and require a Process *de Excommunicato Capiendo*, upon which he shall be imprisoned without Bail. None but a Bishop can certify Excommunication, or one that has ordinary Jurisdiction. *Gibson* 1106.

The Minister or Curate ought to publish Letters denunciatory upon an Excommunication, without Delay, on Pain of Suspension; and that Suits may not be delayed by Persons persisting in Excommunication, the Judge may proceed at the Promotion of the Party grieved against the Excommunicate Person in a Cause of Correction for persisting in Excommunication.

A Man unjustly Excommunicated, by Reason of a false Return of the Citation or other Process, may alledge the same, and upon Proof thereof the Adversary shall be condemned in Costs.

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### *Executors.*

*Executors.*

*A Rule to be observed in their Payments.*

**E**Xecutors must pay Debts before Legacies, and Debts of a higher Nature before others; as first, Debts to the King, then Debts on Record, by Statutes, &c. Debts

£c. Debts on Mortgages, Bonds, £c. Rent, Servants Wages, Book-Debts. They may satisfy what Legacies they will first, tho' there be not enough to satisfy all; or pay a Part of a Legacy, or deduct a Part: But if there be a particular Thing devised, as a Horse, £c. this must be delivered in Specie, and can't be sold by them to pay all or any Part of others. See *Hob.* 265.

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Guardians.

**A** Guardian (or *Curator*) is one that educates a Child, and manages his E-Guardian state till he comes of Age; and is either *what.* Testamentary, *i. e.* appointed by Will of the Father, £c. or by the Law. As to suing of Actions a Guardian must be assigned in that Court where the Suit is to be commenced. A Guardian having instituted an Action against an Executor for a Legacy, the Executor may pay it *apud Acta*, which will be a good Discharge to him against the Infant when he comes to full Age.

The Father or next of Kin of an Infant shall at his own Instance be admitted Guardian (where he is under seven Years of Age); but if above he must appear in Person, and pray a Guardian to be assigned him.

E

*Jactitation.*

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### *Jaftitation.*

*Jaftitation.*

**I**F any Perfon falſly give out that he or ſhe is married to ſuch a one, he or ſhe is to be ſued in a Cauſe of *Jaftitation of Marriage*. Where the Defendant may alledge Matrimony in his own Defence, which if proved, Sentence ſhall be given againſt the Plaintiff, not only for failing in the Proof of the Libel, but it ſhall be pronounced for the Marriage; as in Contract Cauſes, if the Defendant fails in the Proof of his Allegation, he ſhall be condemned in Coſts, and a Monition ſhall Iſſue out againſt him to be ſilent, and deſiſt from ſuch Boasting and Aſſertion for the future.

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### *Interrogatories.*

*Interrogatories.*

**O**NE ſhall not ask a Witneſs a Queſtion, the Affirmative Answer to which may draw him into a Crime. He ſhall not be examined upon Interrogatories till he has gone through the Evidence for the Party on whoſe Side he was produced.

The adverſe Proctor ſhall have a reaſonable Time to prepare his Interrogatories from the Time of the Production of a Witneſs,

Witness, generally twenty-four Hours; if they are not ready by that Time, the Examiner is not to stay or detain the Witnesses.

Long and *Multiplex* Interrogatories often hurt the Cause of the Party ministrant, and make for the Producent.—*Ergo cavete Procuratores!* 

## Inventory.

**B**Y the Laws and Statutes of this Realm *Inventory.*  
 an Inventory is necessary to be made by an Executor or Administrator; and if they refuse they may be punished by the Ordinary. The Things that are to be put into it are all the Goods, Chattels and Credits, Wares, Merchandizes moveable or immoveable, of or belonging, or due to the Deceased at his Death; also Leases, Corn growing; but not Grass or Trees, nor Things fixed to the House, and are Part of the Freehold (for they belong to the Heir); nor the Wife's Goods, called *Paraphernalia*: The Time for making and exhibiting it is left to the Ordinary's Discretion. The Goods must be particularly valued and appraised by one or more honest and skilful Persons, at such Prices as the same might have been sold for at that Time in their Judgment. The Goods contained in the Inventory are presumed to have belonged

*Vide Stat. 21  
Hen. 8. c. 5.*

*What are to be  
put into it.*



*Inhibition. Judge Ecclesiastical.*

to the Deceased, and after his Death to be in the Administrator's Power ; and no more Goods are presumed to have belonged to him than are therein contained. And if any Creditor, &c. affirm that the Deceased had more Goods than are comprized in the Inventory ; he must prove it, otherwise the Judge is to give Credit to the Inventory. *Swinburne of Wills* from 420, &c.

Where an Inventory has been exhibited upon Oath in common Form, and appraised by Neighbours, the Proof lies on the Party objecting.

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*Inhibition.**Inhibition.*

**I**Nhibitions shall not be granted without the Subscription of an Advocate. *Can. 96.* And shall not be granted till the Appeal is exhibited. *Can. 97.*

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*Judge Ecclesiastical.*

*Judge Ecclesiastical.*  
*Unskilful.*  
*Partial.*

**A**N unskilful Judge may be removed. *Godolph. Abr. 82. f. 4. f. 92. f. 19, 20. Godolph. 74. f. 2.* A partial Judge may be refused, (the Party cited exhibiting Articles containing the Partiality, in which Case

Cafe Arbiters must be named on both Sides to judge thereof.)

If a Person suspects any inferior Judge *Provocation* to proceed against him in a Cause of *Cor- what,* rection *minus juste*, he may (before he is cited) put himself under the Jurisdiction of a superior Judge, which is termed Provocation.

*Legacies.*

**W**HERE Legacies are to be paid *Legacies,* to Children at full Age, the Executors may be sued here to put in Security.

If a Legacy is bequeathed generally, and no Time mentioned for Payment, and the Legatee is an Infant, he shall be paid Interest from the Expiration of the first Year after the Testator's Death. Where it is left payable at a Day certain, it must be paid with Interest from that Day at *5 l. per Cent.* *Salk. 415, 416.*

Where Sentence is given for a Legacy, the Legatee must give Bond to refund, in Case Debts appear afterwards. *2 Vent 358. Noell v. Robinson.*

In a Cause of Legacy, all the Executors that are living and proved the Will must be joined in the Suit; and if dead, the Executors or Administrators of the Survivor. Legacies in Specie are to be paid, and may be insisted on to be tendered in Specie *si extant*),

*Libel.*

*extant*), otherwise the true Value. If the Plaintiff proves a Legacy given to him in Specie, as a Gold Cup, &c. and obtains Sentence for it, and that it is substracted, but fails in proving the Value thereof, the Defendant is to be called before the Plaintiff prays Execution to see Liquidation of the Sentence, and the Plaintiff must produce Witnesses to prove the Value.

If an Executor by suppressing a Will, or concealing it, shall obtain Administration (as if the Testator had died intestate) a Legatee may sue for his Legacy, and obtain as in ordinary Cases.

If a Legacy be given to an Infant to be paid him when he shall come to the Age of Twenty-one, if he dies before Twenty-one his Administrator shall sue for it directly.

A Mother Executrix shall not discount for Education and Maintenance out of the Money left to her Son by the Father, for she ought to maintain him; *aliter* where Money is paid to bind him out Apprentice.

2 Vent. 355. *Anonymus*

*Libel.*

*Libel what.*

A Libel is a Declaration or Charge drawn up in Writing on Behalf of the Plaintiff, to which the Defendant is obliged to answer. Words in a Libel [aut  
2 Roll's Abr. *in Effectu consimilia*] good. If a false Copy  
298, 320. of

of a Libel be given, and the adverse Proctor plead to it, he shall have the Advantage of the Plea, for the other was bound to deliver a true Copy ; and Prohibition lies for denying a Copy (but Oath must be first made of the Denial), and that *quousque* the Copy is delivered ; tho' if an Appeal be made for such Denial, as for a *Gravamen*, no Prohibition will be granted. 1 *Vent.* 252. 1 *Roll's Rep.* 337.

All Libels must be signed by an Advocate, and engrossed on a double Six-penny Stamp.

*Licences.*

**M**Arriage Licences are upon these Con-*Marriage Li-*  
ditions. (1.) That there is no Im-*ences.*  
pediment by Reason of any Precontract,  
Consanguinity or Affinity. (2.) That no  
Suit is depending. (3.) That it is with Con-  
sent of Parents or Guardians (where either  
of the Parties are under Twenty-one Years  
of Age.) (4.) That the Marriage be so-  
lemnized in Canonical Hours, *viz.* between  
Eight and Twelve in the Morning ; and  
Oath must be made by one of the Parties  
to the same Effect *sub pœna, &c.* and Bond  
given to the Ordinary with a Penalty of 200l.

An Archbishop cannot license a Marriage  
within the Degrees prohibited, as being a-  
gainst the Law of God. *Hob.* 148. *Colt*  
and *Glover v. Bishop of Coventry and Litch-*  
*field.* 2 *Inst.* 684.



## Marriages.

*Marriages.  
What requisite  
to compleat  
Marriages.*

**A** Full, free and mutual Consent between Parties (not disabled to marry by their near Relation to each other, Infancy, Precontract or Impotency) is very requisite, *nam Consensus, non Concubitus, facit Matrimonium.* As to Marriages within the Degrees prohibited, those in the ascending and descending Lines, *i. e.* of Children with the Father, Grandfather, Mother, Grandmother, and so upwards, are prohibited without Limit (they being the Cause immediate or mediate of their Being). As to Degrees of Affinity, tho' I be not directly forbid to marry my Wife's Sister, yet when God commands me, I shall not marry my Brother's Wife, by Parity of Reason he forbids me to marry my Wife's Sister, for there is the like Analogy and Proportion between one Man and two Sisters, and one Woman and two Brothers.

See 18 *Levit. Vaugh. 246. Carter 233.*  
2 *Vent. 910. 2 Stillingsf. Cas. 58. Noy*  
29. *Co. Lit. 33. a. Trid. 24 Eliz.*  
*Mich. 41, 42 Eliz. Moor 575. 35 Eliz.*  
*Co. Litt. 79. Pasch. 7 Jac. B. R. 1*  
*Danv. 699. Moor 170. 1 Siderf. 13.*  
*Davis 51. 7 Co. 43. Stat. 32 Hen. 8.*  
*c. 38. 2 Inst. 683. 2 & 3 Prid. Con-*  
*nect.*

*nest.* 569. 6 *Co.* 65. 5 *Mod.* 170, 449.  
2 *Lev.* 254. 1 *Sid.* 64. 4 *Leon.* 16.  
*Tbo. Jones's Rep.* 118, 191, 213. 3 *Keb.*  
166. 1 *Mod.* 25. *Salk.* 548. *Vaugh.*  
206, 302.

Bedding is not by Law essential to the Marriage, but it is compleat before, tho' the Law will presume it to have been consummated on Proof that they were upon a Bed together, tho' the Proof of the Celebration of it by the Priest will alone be sufficient to found a Sentence. *Per Dr. A.*

*Nuncupative Wills.*

**B**Y Stat. 29. *Car.* 2. c. 5. no Nuncupative Will shall be good where the *Nuncupative Wills.* Estate bequeathed exceeds the Value of 30*l*, that is not proved by the Oath of three Witnesses that were present at the making, nor unless the Testator bid them bear Witness that such was his Will, nor unless made in his last Sickness, in a House where he had resided ten Days or more before the making (except where surprized and taken sick, and died before his Return home). No Proof will be admitted after six Months after the Words spoken, unless the Substance thereof was taken down in writing within six Days after making, and no Administration (with such Will annexed) shall pass the Seal under fourteen Days, nor then till the  
next

*Case of one.*

next of Kin have been cited to accept or refuse, or contest it,

*S. P.* made a Nuncupative Will as follows; that she would leave to *A. B.* 30 *l.* and to *C. D.* 30 *l.* and being three Times ask'd of this Matter, she always answered, that she would give as above, and all the rest, &c. of her Substance should be equally divided between *E. F.* and *G. H.* which Will was reduced into Writing, and signed by three Witnesses in her Life-time, presently after her speaking the Words, and died next Day. — Two of the Witnesses were examined in a Cause depending in the Bishop of *Bristol's* Court about the Validity of this Will, but the third was beyond Sea.

It was objected there by the Defendant, that the Will was not good within the Meaning of the Statute of 29 *Car. 2. c. 3.* against Frauds, &c. for that it was not proved by the Oaths of three Witnesses (the other being absent), nor but by one that the Testatrix bid them bear Witness, &c. and that the Will runs in the future Tense (that she would give, &c.).

*Quære,* Whether notwithstanding the above Objection the said Will is a good Disposition of her Personal Estate, and whether it be sufficiently proved by the two Witnesses, tho' one of them only has proved the *Rogatio Testium*?

I apprehend that one Witness is in this Law sufficient, and several Judgments have been given (since 29 *Car. 2.*) that one Witness

ness will answer the Intent of that Law. The Objection that the Words are in the future Tense has but little Force; for in making a Nuncupative Will (according to *Swinburne*) no precise Form of Words are required; nor is it material whether the Testatrix speaks properly or not, provided her Meaning and Intention appears, and the Rules enjoined by the above mentioned Statute are observed.—The Objection that to me seems most material is, that this Will is proved by two Witnesses only, (the Estate being above 30 *l.*) and the Statute expressly requires three where it is above that Value.—I am of Opinion in this Case, that the Power, Office and Discretion of the Ordinary are limited, by the exact Form of the Statute, and that he has no Liberty or Authority to wave or excuse the want of the third Witness by reason of Absence, or any Account whatsoever, the Statute being his Rule and the Measure of his Judgment; and therefore I conceive this Will is not within the Words of the Statute, and therefore null and void, and an Administration must be granted to the next of Kin.  
Dr. P. 1722.

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## Oaths.

**A**N Oath is an Affirmation or Denial *An Oath what.*  
of any Thing before one or more  
who have Authority to administer the same,  
for the Discovery of Truth and Right, calling



*Penance.*

3 Inst. 165.

ling God to Witness that the Testimony he gives is true ; and it is called a corporal Oath, because the Witness lays his Hand upon the Holy Scriptures at the Time he takes it ; tho' in Dr. Owen's Case, he being a Witness to prove a Will, refused to be sworn formally, *i. e.* to put his Right Hand upon the Book, but ordered it to be held open before him, and he lifted up his Right Hand ; and *Glyn* held this a sufficient Oath. 2 Syd. 6.

If the adverse Party exhibit Exceptions or dilatory Plea, the Plaintiff may require an Oath of the Proctor that he does not do it for Delay or out of Malice, but that he believes his Client is able to prove the same ; and the Plaintiff may before or after Conclusion pray that his own Oath may be taken as a Supplement where the Proof is *Semiplene*.

A Peer produced as a Witness must be sworn.

*Penance.**Penance.*

—publick.

—private.

**P**UBLICK Penance must be performed by an Offender notoriously guilty of any Ecclesiastical Crimes in the Face of the Church. Penance may be enjoined in a Cause of Defamation ; but that is private, in the Vestry, the Defamer reading a Schedule of Penance in the Presence of the Plaintiff, Minister and Church-wardens. Stat. Artic. Cleri, 9 Edw. 2. c. 2.

*Plene*

### *Plene Administravit.*

**P**LENE *Administravit* cannot be plead- Plene Admi-  
ed, unless all Debts, &c. as far as nistravit.  
Assets will reach, are discharged.

If these Courts refuse to accept the Plea of *Plene Administravit* the Party may appeal, for they proceed ill ; if they accept it, they must try if he has fully administered or not. 1 *Syd.* 274. *Noy* 77.

If an Executor plead *Plene Administravit* in an Account, tho' after Sentence given against him, and before Execution demanded, he is condemned in a Debt in a secular Court, he shall have the Advantage of alledging this Matter.

### *Probates.*

**I**F Executors come to prove a Will, the *Probate*.  
Ordinary must do it in common Form ; but if others come to prove a latter Will, it must be *per Testes*. *Hetl.* 77. The Judge or his Surrogate must administer an Oath to the Executor as follows.

“ You

*Executor's  
Oath.*

“ You swear that you believe this Paper  
 “ contains the true last Will and Testament  
 “ of *A. B.* deceased, and that you are  
 “ the Executor therein named, and that  
 “ you will well and truly perform the  
 “ same, by paying first his Debts, and  
 “ then the Legacies therein bequeathed,  
 “ as far the Estate which shall come to  
 “ your Hands will thereto extend, and  
 “ the Law charge you, and that you  
 “ will bring in a true and perfect Inven-  
 “ tory, and pass a Just Account of your  
 “ Administration when you shall be there-  
 “ unto by Law required.”

If a Quaker be Executor, you must write  
 his Affirmation on the Back of the Will  
 thus.

“ I *A. B.* do solemnly, sincerely and  
 “ truly affirm and declare that I am one of  
 “ the Dissenters from the Church of *Eng-*  
 “ *land*, commonly called Quakers, and  
 “ that I believe this Paper contains, &c.”  
 And let the Quaker set his Name thereto.

The Judge can't refuse a Probate to  
 an Executor *quia incapax*. Salk. 299,  
 303, &c.

*Rates.*

*Rates.*

**T**HE Rates for the Repairs of the Church shall be laid upon every Occupier of Lands in the Parish, tho' he live in another; and he may come to the Vestries, and vote in making the Rate, but he shall not be charged towards the Ornaments of the Church on Account of such Lands, for the Personal Estate of the Inhabitants are chargeable with every Thing that does not relate to the Fabrick of the Church, or Repairs of the Fences of the Church-yards, or such Things as concern the Freehold. *5 Co. 67.* If Church-wardens erect any Thing new, either as to the Fabrick of the Church or Church-yard, they must have the Consent of the Parishioners (and if such Additions are in the Church, the Licence of the Ordinary). Where necessary Repairs are wanting, the major Part of the Parish will bind the less; in such Case, if the major Part will not consent, the Church-wardens may repair without their Consent: If upon Notice given them they refuse to meet, or having met refuse to make a Rate; or this Court will compel them to repair, and may excommunicate all the Parishioners till it be done; but those that are willing to contribute shall be absolved till the major Part agree

*Rates for Repairs of Churches.*

*Vent. 367.*



agree to a Tax, but our Courts can't assents them towards it: And if a Rate be illegally imposed (as by a Commission from the Bishop, &c). without the Parishioners Consent, yet if it be afterwards assented to and confirmed by the major Part of the Parish, that will make it good. 1 *Mod. Rep.* 194.

The Lands of a Company are chargeable for the Repairs of a Church, and a Prohibition was denied in this Case. 2 *Jones* 187.

## Seats.

## Seats in Church.

**S**EATS in Churches do not belong to Persons, but to Houses. If an Inhabitant of a Parish has Time out of Mind repaired an Isle of a Church, and used to sit there, &c. such Usage makes it proper to the Family; otherwise if it has been repaired at the Parish Charge. An Isle may belong to a private Person, yet the Freehold is in the Incumbent. See *Watson's Incumbent* 382, &c. In Case a Person in Possession of a Seat in a Church be disturbed by another, the Ordinary may inhibit the Disturber till the Matter be determined. *Godolph. Abr.* 138, 146, 151, 155, 157. If a Man with the Assent of the Ordinary sets up a Seat in Nave Ecclesie, and another pulls it down, Trespass *Vi. et Armis* will not

## Sequestration.

81

not lie, for the Freehold is in the Parson, and the only Remedy is in our Courts. *Watsf. 382, &c.*

Tho' the Minister and Church-wardens have no Right (exclusive of the Ordinary) in placing the Parishioners, but must act in Subordination to him (because when any Dispute of this Nature arises he may set aside what they have done if he sees Cause); yet Persons so placed in a Seat unappropriated, may continue to use such Seat till the Matter comes to be litigated and determined in the proper Court. *Wharton Pecke, Norwich 1732.*

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## Sequestration.

**I**N Causes Matrimonial, where the Plain-<sup>Sequestration</sup> tiff suspects the Woman will (*pendente* <sup>Causâ Matri-</sup> *Lite*) marry another, he may have her se-<sup>monii.</sup> questred pending the Suit.

If two Persons claim a Right to a Bene-<sup>—of a Bene-</sup> fice, and alledge the same before a Judge<sup>fice.</sup> respectively, the Profits thereof shall at the<sup>See Watson's</sup> Petition of either of the Parties be seques-<sup>Incumb. 422,</sup> tred pending Suit. A Living may be se-<sup>&c.</sup> questred for Dilapidations, &c.

F

Spoli-

## Spoliation.

*Spoliation.*

**I**F one and the same Person present two Clerks, one to the Parsonage and the other to the Vicarage, and the one takes the Fruits of the other, the Party grieved shall sue *in Causâ Spoliationis*. See *Watson's Incumb. p. 8.*

## Wills.

*Wills.*

**A** Young Man beyond Sea wrote a Letter, in which he declared his Will to be, that his Effects should go in such a Manner; and adjudged good. *Moor* 117, *West's Case.* 2 *Leon.* 35. 3 *Leon.* 70. Tho' not sealed. *March* 206. Tho' in loose Sheets. 1 *Syd.* 315. Tho' in Form of an Indenture and sealed, and delivered, being proved to be intended as a Will. 1 *Mod.* 177. Good, where the Lawyer only took short Notes with Design to reduce it into Form, which he after did, but the Devisor died before it was read to him. 1 *And.* 34. 1 *Brownl.* 44. *Dyer* 72. *Kelw.* 209. Where wrote down unknown to the Devisor, and afterwards read to him, and approved by him. *Cro. Eliz.* 100. 1 *Leon.* 113. Where good tho' gnawn to Pieces by

by Rats in the Testator's Life-time, if by joining the Pieces together the Contents can be known. If a Man writes his Will with his own Hand, (tho' he does not subscribe his Name), but seals and publishes it, and the three Witnesses subscribe their Names in his Presence, it is a good Will, for his Name being wrote in the Will, it is a sufficient Signing, and the Statute does not direct whether it shall be at the Top or Bottom. 3 *Lev* 1. And by three Judges against one the Sealing is a Signing within the Act. And *note*; it is not said in the Act that the Signing shall be in the Presence of the three Witnesses, but their Subscription must be in his Presence. 3 *Mod.* 219. To a Will of a Personal Estate two Witnesses are sufficient. *Co. Litt.* 111. One may make a Will in several Writings, and those Writings may be made at different Times; no Man can think all his Thoughts at once. 2 *Cro.* 144. *Noy* 117. 1 *Show.* 69. If one being sick gives Notes to make his Will, and afterwards is so weak that his Memory fails him, and these Notes are made into a Will, it is good; *aliter* if he become a Lunatick after the Notes given. 1 *Brownl.* 44. If a Will be wrote by the Testator himself, and found in his Escutore among other Writings (tho' not published in the Presence of Witnesses, and by them attested), it is a good Will; tho' in this Case the Executor must procure two People that were well acquainted with the Testator's Hand-writing, to



## Case 1.

make Oath that they believe that to be his Hand-writing.

*Rider v. Rider* in the *Prerogative* 1703. *Tho. Rider*, Esq; was the Deceased; his Brother alledged that the Deceased gave Instructions to Mr. *L.* to make his Will; that Mr. *L.* made a Draught, and caused a Transcript to be made which he gave to the Deceased, who carried it away, and afterwards made several Obliterations, Alterations and Interlineations with his own Hand, and then transcribed it over fair, that the fair, and also the altered Transcripts, with the first Draught made by Mr. *L.* were found in the Deceased's Study. The fair Transcript was propounded by the Brother, (who was a Legatee) and was contained in two Sheets of Paper which were found loose; it concluded thus: "In witness whereof I the said *Tho. Rider* have to this my last Will and Testament set my Hand and Seal the Day of in the Year of our Lord 1697."

*Note*; the Will was neither signed nor sealed.—There were no Witnesses examined to the Deceased's Hand-writing, but the same was confessed by the Widow in her Answers, as likewise that the fair Transcript and Draughts were found in the Deceased's Study.

The Widow in Opposition to this propounded a Draught of a Will which was not of the Deceased's Hand-writing, but of a later Date, viz. Aug. 1701, but not executed; she pleaded that it was drawn

drawn by the Deceased's Directions, read over to and approved by him, and he declared he would execute it. This was found in his Study with the others before-mentioned. The Judge pronounced that the Deceased died intestate, from which Sentence the Brother appealed *ad statim* to the Delegates. And in 1704 the Delegates reversed the Sentence of the Judge of the Prerogative, and gave Sentence for the fair Transcript of the Deceased's Hand-writing propounded by the Brother.

*Miller v. Miller.* John Miller deceased. Case 2.

This Cause was originally begun in the Prerogative, between the Brother and Widow. The Brother propounded a Will unexecuted, and pleaded that it was drawn by the Deceased's Directions, read over to and approved of by him; but the Persons in whose House the Deceased lay ill refused several of his Friends Admittance, and therefore the Writer of it had not an Opportunity of getting it executed. It concludes thus.

" In witness whereof I the said John Miller  
 " have to each Sheet of this my last Will  
 " and Testament, comprized in two Sheets  
 " of Paper, subscribed my Name, and put  
 " my Seal to the Top and Bottom thereof.  
 " Dated the Day and Year first above writ-  
 " ten." Note; It was dated at the Top  
 24 July 1680. " Signed, sealed, publish-  
 " ed and declared by the said John Miller  
 " the Testator, for and as his last Will and  
 " Testament, this 24th Day of July 1680.  
 " in the Presence of . . . " The De-

ceased died the 31st of July 1680.——

The Widow pleaded *Insanity*, that all Persons had free Access to the Deceased, that the Writer of the Will had Access but would not leave it with the Deceased.

——This Cause was appealed to the Delegates from a Grievance, which was pronounced for, and they gave Sentence for the Will in 1681.

Case 3.

*Worlich v. Pollet.* Mary Pollet deceased. This Cause began before the Commissary of London between the Deceased's Daughter (a Minor and Residuary Legatee in the Will, acting by Henry Worlich her Guardian) and Husband, who opposed the Will.——It appears by the Evidence in this Cause, that the Deceased, who was ill, told one *Eliz. W.* that she intended to make her Will, declared how she would have it made, desired her to get what she had so declared to her reduced into Writing, which she did, and carried the same, being the Draught of a Will to the Deceased, and read it over to her, and she approved of it, and desired her to get it wrote over fair, which she did, and carried it to her; to whom it was read over, and she approved of it, and declared it to be her last Will, and ordered her Nurse to fetch one Mr. P. to be a Witness; but being told he was from home the Will was left with her, and she died eight Days afterwards without executing it. It concludes thus. "In witness whereof I the said Mary Pollet have hereunto put my Hand and Seal this 28th  
" Day

“ Day of *August* 1700. Signed,  
 “ sealed, published and declared by the said  
 “ *Mary Pollet* as her last Will and Testa-  
 “ ment, in the Presence of ” (the  
 Words *Mary Pollet* interlined before Seal-  
 ing). Dr. *Newton* the Commissary in 1701  
 gave Sentence for the Will; the Husband  
 appealed to the Arches, where the Com-  
 missary’s Sentence was reversed, and the  
 Deceased pronounced to die intestate; the  
 Guardian then appealed to the Delegates;  
 and in *Michaelmas* 1702 the Judges (being  
 five Civilians only), annulled the Sentence  
 of the Dean of the Arches, confirmed Dr.  
*Newton*’s, pronounced for the Will, and  
 decreed Administration (*cum Testamento*,  
 &c.) to the Guardian.

*Wright v. Waltboe. Richard Holman Case 4.*  
 deceased. Sentence was given in the Pre-  
 rogative in 1710 for three Testamentary  
 Schedules of the Testator’s Hand-writing.  
 —The first concludes abruptly without  
 any Name or Date. —The second thus.  
 “ And I do here declare this to be my last  
 “ Will written in and have here-  
 “ unto set my Hand and Seal the  
 “ Day of and in the Year of  
 “ our Lord ” —This is neither  
 signed or sealed. —The third concludes  
 abruptly, being neither signed, sealed or  
 dated.

*Deborab Langston* deceased. Sentence *Case 5.*  
 in 1723 for three Testamentary Schedules  
 of the Deceased’s Hand-writing; the first  
 was executed in the Presence of two Wit-  
 nesses.



nesses. The second is signed by the Deceased, and afterwards these Words wrote "signed and sealed *Sept. 13. 1721.*" The third concludes abruptly without Execution.

Case 6.

*Willing Snelling* deceased. This Will is of the Deceased's Hand-writing, and concludes without saying *In witness, &c.* but the Words *signed, sealed, published, &c.* wrote underneath,——It was neither signed, sealed or witnessed; it was proved in *February 1712.*

Case 7.

*David Dagget* deceased. The Will was of the Deceased's Hand-writing, and concluded "In witness whereof, to this and "to the other seven Sheets annexed I have "set my Hand and Seal the Day "of *July 1715.*" The Words (*signed, sealed, &c.*) wrote underneath. There was a Seal, but not signed or witnessed. A *Caveat* was entred by the Deceased's Son, which was warned, and he had a Time assigned him by the Court to declare whether he would oppose the Will or not; but upon his not opposing, Probate was granted in *Feb. 1718* to the Daughter (Executrix).

Case 8.

*Robert Pollard* deceased——The Will was of his Hand writing, and concluded thus. "Witness my Hand and Seal the Note; neither signed nor sealed. Proved 17 *December 1705.*

Case 9.

*William Russell* deceased. The Will was of his Hand writing, and concluded "In witness whereof I have hereunto set "my Hand and Seal the Day and Year "first

“ first above written.

(signed, sealed, &c.) Note ; there is a Seal, but not signed or witnessed ; it was proved August 3, 1727.

*Joshua Hinton* deceased. He was an *Case 10.* eminent Attorney in *London*, and in his last Illness had a Design to have made his Will himself, and therefore wrote down his Intentions on a Scrip of Paper, beginning thus: “ My Will and Desire is——Ten “ Pounds to Wife and Daughter for Mourn- “ ing,” besides several Legacies (the Sums in Figures, with the initial Letters only of the Names of the Legatees), and concludes “ Executors, *John Lateward, Richard “ Lateward, John Adams.*”—This Schedule was propounded by the Executors, who gave an Allegation pleading the Identity of the several Persons in the said Scrip mentioned, and was opposed by the Widow and Daughter.——Sentence was given against this in the Prerogative in *April 1738*, and Administration decreed to the Widow. On the third of *May* following, the Executors moved to be paid their Expences in supporting the same, which (after many Arguments) they were allowed ; but the Judge refusing to let the Administration pass before they were paid, a *Mandamus* was granted to compel him.

*J. L.* and *M. L.* his Wife made their *Case 11.* joint Will, appointing the Survivor Executor ; and thereby the said *J. L.* did will, that in *Case of his Death before his Wife*, she should remain possessed of all his Goods, &c.

*&c. to enjoy and dispose of as she pleased, only recommending to her to leave at her Death three Fourths of the then remaining Moiety of his Effects to M. A. and the other Fourth to J. B. or their Heirs, leaving her to dispose of the other Moiety at her Pleasure.*

The said M. L. survived, took Probate, and possessed herself of his Effects, made her Will, disposing of the said Moiety as above, and afterwards intermarried with J. C. and died.

Is not the said Will, made during her Widowhood, by the subsequent Marriage become void? And is not Mr. J. C. intitled to Administration to her as dying intestate?

I am of Opinion that her Will became void by her Marriage with Mr. J. C. as to all the Estate which she had a Property in, and at that Time a Right to dispose of, by Reason that such Estate became her Husband's by Marriage; but she being Executrix of her former Husband, such Part of the Estate as came to her as Executrix, and the Property whereof did not vest in her, did not become the Husband's by Marriage, and her Will may stand good as far as relates thereto; and a limited Probate or Administration (with the Will annexed) may be granted to the Persons interested, and an Administration of the rest of the Estate to Mr. C. her Husband. See *Wentworth* 201; per Dr. A———w 1738.

R. B.

R. B. bequeaths thus. "*Item* I give, *Case* 12.  
 " &c. all the rest of my Estate to my  
 " Wife E. B. and Son R. B. making and  
 " joining them whole and sole Executor and  
 " Executrix of this my Will." R. the  
 Son in 1728 proves (Power being reserved  
 to E. the Widow and other Executrix) and  
 receives 100 *l.* of his Father's (which was  
 at Interest) and pays it to J. S. (who since  
 married E. the Widow) and also sold se-  
 veral of the quick Goods of his Father's,  
 and kept the Money to his own Use, and  
 dies.——E. has since his Death proved  
 the Will to intitle herself to the whole or  
 her Half-Share, of her Husband's Effects.  
 ——The *Query* was, if the Effects by the  
 Bequest of the Will, and their being *made*  
*and joined whole, &c.* would go to the  
 Survivor of them? Or if so, if the Pay-  
 ment of the 100 *l.* by one Executor to the  
 other's Husband, and the Executor's selling  
 Part of the Goods, and retaining the Mo-  
 ney to his own Use, would be presumed in  
 Law to be a Division of that Part of the  
 Estate, if not the whole of the Effects?  
 The Bequest of the Residue in this Case I  
 look upon to be in the Nature of a joint  
 Legacy: Had either of the Legatees died  
 before the Testator, the whole would have  
 accrued to the Survivor; but where both  
 live to take, the Law divides the Legacy,  
 which immediately vests in the Legatees,  
 each for his Share upon the Death of the  
 Testator; so that tho' no Division has  
 actually been made, yet the Estate being  
 once



once vested, it is my Opinion the Share of the deceased Executor will go to his Representative, and not to the surviving Executrix.

As to such Part of the Estate as has been actually divided in the Son's Lifetime; or such Effects as were in the Testator's own Hands at his Death, whether Money, Stock or Goods, and were devisable at any Time, I make no Question; nor of such Debts as have been actually received since his Death. The Doubt with me is concerning such Things as the Law calls a *Chose en Action*, where the Testator had not the Thing in Possession, but only a Right of Action to recover it, or perhaps of a Chattel Lease, which being a Thing indivisible till sold, I am not so clear whether these would not accrue to the surviving Executor. Dr. A——y 1730.

If a Cause be instituted between an Executor and one of the Testator's Relations by Collusion to prove the Will *per testes*, and the Executor by such Collusion is to fail therein, a Legatee having Interest in the Will may intervene in Judgment to preserve his own Interest.

Witnesses

*Witnesses.*

**A** Legatee is a competent Witness to prove a Will (after he has renounced his own Legacy). *3 Keb. 570.* Such as are infamous, as attainted of Felony or false Verdict, Conspiracy, Perjury or Forgery, or have had Judgment to lose their Ears, or have been branded, Infidels, of *Non sane* Memory, or as have Interest in the Cause, are not competent Witnesses. *1 Inst. 6. 3 Lev. 426.* Tho' Judgment of the Pillory infers Infamy at the Common Law, it does not by our Law, unless the Cause for which he was convicted was infamous; and unless he was convicted for an infamous Cause, he shall be a good Witness to prove a Will.

A *Jew* is a good Witness, and may be sworn upon the Old Testament. *2 Keb. 314.*

Where one objects a Crime to disable a Witness, he must produce the Record of his Conviction, if he would invalidate his Testimony.

It may be justifiable to maintain or subvert a Witness, but not to offer him any Reward tho' to speak the Truth.

The Character of a Witness may be given. Adultery in a Witness is good Cause of Exception: The Plaintiff may except against the reprobatory Witnesses of the Defendant.

dant, against which no further Exception shall be admitted; but the Defendant, tho' he cannot again except, may alledge Matter to confirm the Evidence of his Witnesses.

In Causes Testamentary the Plaintiff may proceed to examine Witnesses upon Return of the Citation, with Intimation, the Defendants not appearing notwithstanding.

The Plaintiff may alledge Matter within the Term assigned to prove his Exceptions to corroborate the Dispositions of his Witnesses; and if after Publication, and before Conclusion, other necessary Witnesses have come to the Plaintiff's Knowledge, the Plaintiff himself and not the Proctor, making Oath thereof, shall have them admitted and sworn. In Matrimonial Causes new Witnesses may be produced after Publication, and even after Sentence without Oath made as above.

APPEN-

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## A P P E N D I X III.

### CONTAINING,

A List of Fees Presental by the Lord Archbishop of *Dublin* his Grace, and by the Judges and Officers of his Consistory Court of *Dublin*, considered of by his Majesty's Commissioners, for Reformation of Fees the third Day of *June*, One Thousand Six Hundred Sixty and two. And to be further approved of, by the Right Honourable the Lord Deputy as shall be thought fit, and in the Interim, the same Fees to be taken by the Archbishops and Bishops of this Kingdom respectively.

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# APPENDIX III.

## CONTAINING,

*A List of Fees Presental by the Lord Archbishop of Dublin his Grace, and by the Judges and Officers of his Consistory Court of Dublin, considered of by his Majesty's Commissioners, for Reformation of Fees the third Day of June, One Thousand Six Hundred Sixty and two. And to be further approved of, by the Right Honourable the Lord Deputy as shall be thought fit, and in the Interim, the same Fees to be taken by the Archbishops and Bishops of this Kingdom respectively.*

### Fees in the Consistory Court.

### Fees due in Causes of Office.

|                                                                                             | Judge |    |    | Register |    |    |
|---------------------------------------------------------------------------------------------|-------|----|----|----------|----|----|
|                                                                                             | l.    | s. | d. | l.       | s. | d. |
| <b>I</b> mprimis, For Articles in a Visitation                                              | 0     | 0  | 0  | 0        | 4  |    |
| For entering every Bill of Presentments                                                     | 0     | 0  | 0  | 0        | 4  |    |
| For every original Citation, &c. Officio Mero, or at the Instance of a Party                | 0     | 0  | 4  | 0        | 1  | 6  |
| For the Appearance of every Person cited to appear of Office, or at the Instance of a Party | 0     | 0  | 0  | 0        | 6  |    |
| For every Contumacy entered against a Man                                                   | 0     | 0  | 0  | 0        | 6  |    |

|                                                                                                                                               | Judge |    |    | Register |    |    |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-------|----|----|----------|----|----|
|                                                                                                                                               | l.    | s. | d. | l.       | s. | d. |
| For drawing and writing a Sentence of Excommunication against a Man                                                                           | 0     | 0  | 00 | 3        | 4  |    |
| For a Denunciation against any Man Excommunicated                                                                                             | 0     | 0  | 40 | 2        | 6  |    |
| For every <i>Significavit pro Corpore Capiendo</i> , for one or more Persons, one Fee for each <i>Significavit</i>                            | 0     | 10 | 00 | 3        | 4  |    |
| For every <i>Mandat pro Corpore Deliberando</i>                                                                                               | 0     | 10 | 00 | 3        | 4  |    |
| For entering into the Act Book, the absolving of every Man Excommunicated                                                                     | 0     | 0  | 00 | 1        | 0  |    |
| For the Copy of the Act                                                                                                                       | 0     | 0  | 00 | 1        | 0  |    |
| For a Testimonial under the Judges Seal and the Registers Hand of the absolving of every Man Excommunicated, if the Party desire it           | 0     | 10 | 00 | 3        | 4  |    |
| For drawing of Articles against any Man detected or presented for Fornication, or other Crimes, to the Register or Proctor that does the Work | 0     | 0  | 00 | 3        | 4  |    |
| For exhibiting the same                                                                                                                       | 0     | 0  | 00 | 1        | 6  |    |
| For the Production of every Compurgator                                                                                                       | 0     | 0  | 70 | 0        | 6  |    |
| For the Party himself Compurgant                                                                                                              | 0     | 1  | 60 | 1        | 0  |    |
| For Proclamation, Intimation, and Publication of Purgation                                                                                    | 0     | 3  | 40 | 3        | 4  |    |
| For a Testimonial under Seal, where a Purgation is desired by the Party                                                                       | 0     | 10 | 00 | 3        | 4  |    |
| For a Definitive Sentence against any Adulterer, Fornicator, Incestuous Person and other Offenders Convicted                                  | 1     | 0  | 00 | 6        | 8  |    |

For

Judge | Register  
l. s. d. l. s. d.

|                                                                                                  |   |    |    |   |   |
|--------------------------------------------------------------------------------------------------|---|----|----|---|---|
| For every interlocutory Sentence                                                                 | 0 | 10 | 00 | 3 | 4 |
| For every Order or Form of Penance<br>enjoyed or prescribed to Offenders                         | 0 | 0  | 00 | 3 | 4 |
| For the Return and entering of a<br>Certificate, of performing Penance<br>enjoyed to an Offender | 0 | 0  | 00 | 3 | 4 |
| For every Testimonial under Seal of<br>any Man of performing Penance,<br>if desired by the Party | 0 | 10 | 00 | 6 | 8 |

*Fees due in Causes of Instance, and  
for Decrees of Court.*

|                                                                                                                                |   |   |    |   |   |
|--------------------------------------------------------------------------------------------------------------------------------|---|---|----|---|---|
| <b>F</b> OR the Constitution of a Proc-<br>tor entered <i>Apud Alia</i>                                                        | 0 | 0 | 00 | 1 | 6 |
| For Exhibiting of a Proxy or Substi-<br>tution of a Proctor                                                                    | 0 | 0 | 00 | 1 | 6 |
| For every Citation at the instance of<br>a Party, with an Inhibition or Inti-<br>mation                                        | 0 | 3 | 40 | 3 | 4 |
| For entering every Act in <i>Loco Solito</i><br><i>Judicij</i>                                                                 | 0 | 0 | 00 | 0 | 6 |
| For entering every Act, <i>extra Locum</i><br><i>Solutum Judicij</i>                                                           | 0 | 0 | 00 | 1 | 6 |
| For exhibiting every Libel, Allega-<br>tion, Articles or other Matter what-<br>soever exhibited in our Court                   | 0 | 0 | 00 | 1 | 6 |
| For the Production of every Party<br>principal upon Libels, Allegations,<br>Articles, or other Matters exhibi-<br>ted in Court | 0 | 1 | 60 | 1 | 6 |
| For the taking and writing of the per-<br>sonal Answer of every such Party                                                     | 0 | 0 | 00 | 2 | 6 |



## Judge Register

l. s. d. | l. s. d.

|                                                                                                                                             |   |    |    |   |   |
|---------------------------------------------------------------------------------------------------------------------------------------------|---|----|----|---|---|
| For the Production of every first Witness, upon the Libel, Allegation or other Matter                                                       | 0 | 1  | 00 | 0 | 6 |
| For the Production of every other Witness                                                                                                   | 0 | 0  | 8  | 0 | 4 |
| For the Examination and Repetition of every first Witness upon Articles, Libels, and Exceptions or any other Matter or Allegation exhibited | 0 | 1  | 00 | 1 | 0 |
| For the Examination and Repetition of every other Witness                                                                                   | 0 | 1  | 00 | 0 | 9 |
| For the Examination and Repetition of every Witness, upon Interrogatories exhibited by the Defendant                                        | 0 | 1  | 00 | 7 | 0 |
| For a Commission to examine Witnesses or a Party Principal                                                                                  | 0 | 10 | 00 | 3 | 4 |
| For every Instrument or Matter that shall be annexed to such Commission, if short                                                           | 0 | 0  | 00 | 3 | 4 |
| To the Judge and Register, if they go out of their Houses, to examine a Party Principal or other                                            | 0 | 10 | 00 | 3 | 4 |
| For a Commission to take an Oath or Bonds in the Country or to praise Goods or to take an Account                                           | 0 | 10 | 00 | 3 | 4 |
| For every Suppletory Oath of a Party                                                                                                        | 0 | 1  | 60 | 1 | 6 |
| For shewing the Records for the Comparison of Hands                                                                                         | 0 | 0  | 00 | 3 | 4 |
| For the Comparison of a Copy of a Record                                                                                                    | 0 | 0  | 00 | 3 | 4 |
| For attending every Information, and shewing the Records                                                                                    | 0 | 0  | 00 | 3 | 4 |
| For Registering small Exhibits 3 s. 4 d. a piece                                                                                            | 0 | 0  | 00 | 3 | 4 |

For

Judge Register  
l. s. d. l. s. d.

|                                                                                                                                                                                                       |   |    |    |   |   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|----|---|---|
| For Registring Indentures or other large Exhibits after the Rate of 5s. a Side; in the Register Book close written, the same in Folio in Royal Paper, or the like Proportion                          |   |    |    |   |   |
| For every Decree of Court, viz. a gainst Witnesses, Party Principal, or for any other Decree of Court                                                                                                 | 0 | 1  | 00 | 2 | 6 |
| For a Citation or a Decree, viz. & no dis                                                                                                                                                             | 0 | 1  | 00 | 2 | 6 |
| For a Citation or Decree to shew Cause why a Man should not be Excommunicated                                                                                                                         | 0 | 1  | 00 | 2 | 6 |
| For other Decrees as personal, viz. & modis, compulsory against Witnesses, to see Sentence put in Execution, or any other Decree decreed by the Judge against any Person either of Office or Instance | 0 | 1  | 00 | 2 | 6 |
| For every Bond or Obligation                                                                                                                                                                          | 0 | 0  | 00 | 2 | 6 |
| For Cancelling the same                                                                                                                                                                               | 0 | 0  | 00 | 2 | 6 |
| For the Copy of every Act                                                                                                                                                                             | 0 | 0  | 00 | 0 | 6 |
| For the Renunciation of an Executorship or of the Right of Administration                                                                                                                             | 0 | 3  | 40 | 3 | 4 |
| For every several Search made in the Office                                                                                                                                                           | 0 | 0  | 00 | 2 | 6 |
| For exhibiting the Writ of Prohibition at the first bringing thereof                                                                                                                                  | 0 | 10 | 00 | 5 | 0 |
| For the Consultation exhibiting                                                                                                                                                                       | 0 | 0  | 00 | 0 | 0 |
| For conceiving and drawing every Definitive Sentence to the Register or Proctor                                                                                                                       | 0 | 0  | 00 | 6 | 8 |

|                                                                                                                                            | Judge    |    |    | Register |   |  |
|--------------------------------------------------------------------------------------------------------------------------------------------|----------|----|----|----------|---|--|
|                                                                                                                                            | l. s. d. |    |    | l. s. d. |   |  |
| For a Sentence Definitive, or Interlocutory having <i>vim sententib.</i> Definitive at the Instance of a Party                             | 1        | 0  | 00 | 6        | 8 |  |
| For every other Dismiss                                                                                                                    | 0        | 6  | 80 | 3        | 4 |  |
| For the Copy of every Sentence                                                                                                             | 0        | 0  | 00 | 6        | 8 |  |
| For comparing and examining the Bill of Costs, with the Records                                                                            | 0        | 0  | 00 | 3        | 4 |  |
| To the Register or Proctor who makes the Bill of Costs                                                                                     | 0        | 0  | 00 | 3        | 4 |  |
| For taxing of every Bill of Costs                                                                                                          | 0        | 4  | 00 | 0        | 0 |  |
| For the Protestation of an Appeal <i>apud Acta</i>                                                                                         | 0        | 0  | 00 | 1        | 0 |  |
| For every Appeal made <i>viva voce</i> and entered <i>apud Acta</i>                                                                        | 0        | 0  | 00 | 3        | 4 |  |
| For exhibiting every Appeal, <i>in scriptis</i>                                                                                            | 0        | 0  | 00 | 3        | 4 |  |
| For Apostles, where an Appeal is made from the Judge                                                                                       | 0        | 10 | 00 | 3        | 4 |  |
| For exhibiting Apostles to the Metropolitan, when an Appeal is made <i>a Judice inferiori</i>                                              | 0        | 0  | 00 | 3        | 4 |  |
| For entering of every Certificate of the Prosecution of an Appeal                                                                          | 0        | 0  | 00 | 3        | 4 |  |
| For an Inhibition against the Judge, & <i>quo</i> Register and Party Appellat with a Citation against the Appellat                         | 0        | 3  | 40 | 6        | 8 |  |
| If the Party Appellat be excommunicated, and the Inhibition contains an Absolution of the Party so Excommunicated, added to the former Fee | 0        | 3  | 40 | 3        | 4 |  |
| For every Decree of Court in a Cause of Appeal <i>ad transmittend' proces sum Jud' a quo</i>                                               | 0        | 3  | 40 | 3        | 4 |  |

For

Judge Register  
l. s. d. l. s. d.

For the transmitting of a Process to the superior Court, to the Judge for his Seal, 6 s. 8 d. and to the Register after the Rate of the Tax, made by the Judge, *ad quem* which is commonly for every Leaf, 4 d.

For a Composition of Processes transmitted, *a Judice inferiori ab utraque Parte, viz.* the fourth Part by the Appellant, and the third Part by the Appellant

ut intra ut intra

or o o out intra

*Fees due for Copies, Exemplifications, Certificates, Letters of Tutelage and Caveats.*

FOR the Copy of the Examination of every Witness examined, as well upon a Libel, Allegation, or other Matter, as upon Interrogatories 3 s. 4 d. and if long, 6 d. per Sheet to be Copied six Words in a Line, and fifteen Lines in a Sheet

o o o ut intra

For the Copy of every Libel, Allegation, Matter, Answer, Interrogatories, or a Commission *in partibus*, or an Administration 3 s. 4 d. and if long 6 d. per Sheet, fifteen Lines to a Sheet

o o o out intra

For the Copy of every Will, Proxy, Inventory, Accompt or any other Matter 6 d. per Sheet

o o o out intra

For



|                                                                                                                                                                                                                                                          | Judge             |    | Register |          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|----|----------|----------|
|                                                                                                                                                                                                                                                          | l.                | s. | d.       | l. s. d. |
| For the Copy out of the Record, for<br>an Act of Institution of any Clerk<br>admitted                                                                                                                                                                    | 0                 | 0  | 0        | 3 4      |
| For the Exemplification of any Sen-<br>tence, Will, Administration, or<br>other Proceedings of Court                                                                                                                                                     | 1                 | 0  | 0        | 0 0      |
| For an Exemplification of an Act un-<br>der the Seal, if it be required                                                                                                                                                                                  | 0                 | 6  | 8        | 0 3 4    |
| For Letters Testimonial upon Libels,<br>Depositions of Witnesses, or other<br>Records after the Rate of 8 s. per<br>Skin of Parchment, (after the first<br>Skin allowed free) over and above<br>the Register's Fees, as aforesaid                        | ut intra ut intra |    |          |          |
| For the Admission of every Advocate<br>and Proctor, and for registering the<br>same                                                                                                                                                                      | 0                 | 0  | 0        | 1 6      |
| For a Certificate under the Register's<br>Hand of the Probate of a Will,<br>granting Letters of Administrati-<br>on, Sequestration or Letters of<br><i>Tutel' Lettres ad Colligend'</i> , or any<br>other thing done or granted re-<br>maining on Record | 0                 | 0  | 0        | 3 4      |
| For a <i>Certiorari</i> or Certificate under<br>Seal of any Record or Act, into<br>any of his Majesty's four Courts                                                                                                                                      | 0                 | 10 | 0        | 0 3 4    |
| For Letters of Tutelage of the Goods<br>and Person of a Minor                                                                                                                                                                                            | 1                 | 0  | 0        | 0 6 8    |

Where

Judge Register  
l. s. d. l. s. d.

Where an Administration is granted during the Minority of an Executor, or of Children; if upon Expiration or Revocation of the same, he that was the Minor, shall acknowledge Satisfaction, *apud Abba*, to the Judge 6 s. 8 d. to the Register for entering the same 3 s. 4 d.

For entering every *Caveat*

If the Party desire a Copy of it

0 3 4 0 3 4

0 0 0 0 1 0

*Fees due for Licenses, Suspensions, Sequestrations, Relaxations, Resignations and such other.*

FOR every License of Marriage

For every other License of what Nature soever

0 10 0 0 13 4

0 10 0 0 3 4

For every Suspension of a Minister

0 10 0 0 3 4

For every Sequestration,

0 10 0 0 3 4

For every Relaxation

0 10 0 0 3 4

For exhibiting and Registering a Minister, Nomination of a Parish Clerk

0 0 0 0 2 6

For drawing every Qualification

0 0 0 0 3 4

For Letters Requisitionary

0 3 4 0 3 4

For the Instrument or Prothocal thereupon

0 0 0 0 3 4

For exhibiting every Resignation of a

Benefice before the Judge and entering the same

0 3 4 0 3 4

For

Judge Register  
l. s. d. l. s. d.

For admitting and entering every Presentation made by a Patron, to any Ecclesiastical Benefice, to the Judge 3 s. 4 d. but if not admitted, none to the Judge, but 3 s. 4 d. to the Register

*Fees due for Letters of Orders, Consecration of Bishops, Unions, Institutions, and such like.*

|                                                                                                                                                                                                                                                                     |                   |    |    |    |   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|----|----|----|---|
| FOR writing Letters of Orders for Deaconship                                                                                                                                                                                                                        | 0                 | 0  | 00 | 10 | 0 |
| For writing Letters of full Orders                                                                                                                                                                                                                                  | 0                 | 0  | 00 | 10 | 0 |
| For all Proceedings upon the Consecration of a Bishop, to the Vicar General 4 l. to the Register 2 l. to the Archbishop's Household Servants 4 l.                                                                                                                   | ut intra ut intra |    |    |    |   |
| For all Proceedings upon the Election and Confirmation of a Dean, where the Deanry is Elective                                                                                                                                                                      | 1                 | 0  | 01 | 0  | 0 |
| For every Institution to a Benefice upon a Presentation, Admission upon Collation, <i>Mandat ad inducend</i> , Subscription and all other Certificates and other Fees, thereupon to the Archbishop or Bishop (if not by them otherwise granted) and to the Register | 1                 | 10 | 01 | 0  | 0 |
| For drawing and writing every Collation                                                                                                                                                                                                                             | 0                 | 0  | 01 | 0  | 0 |

For

Judge Register

l. s. d. l. s. d.

For an Union of two Benefices, *durante Vita vel uncubentia*, to the Archbishop (if not by them otherwise granted) 1 l. 13 s. 4 d. and to the Register 1 l. 13 s. 4 d.

*Fees due for Exhibits.*

**F**OR exhibiting Proxies in the Bishops provincial Synod, *viz.* for every Bishop not appearing 6 s. 8 d. for every Dean 6 s. 8 d. for the Chapter 6 s. 8 d. for every Archdeacon 6 s. 8 d. and for the Body of the Clergy 6 s. 8 d.

For exhibiting every Proxy, of every Clergyman, not appearing in the Ordinary Visitation

For exhibiting the Clergy's Titles, in the Archbishop's Triennial and Ordinary Visitation; for Letters of Deacon and Priesthood 2 s. 6 d. for every Union 6 s. 8 d. for every Dispensation 6 s. 8 d. for every Institution and Induction to each Benefice 2 s. 6 d. two third Parts to the Archbishop and Bishop, (if not otherwise disposed of) to the Register

For every Licence to serve a Cure

For exhibiting a Licence for Parish Clerkship



*Fees due for Testaments, Administrations, and other Things incident thereto.*

|                                                                                                                                                                                                                                    | Judge |    | Register |                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----|----------|--------------------|
|                                                                                                                                                                                                                                    | l.    | s. | d.       | s. d.              |
| <b>F</b> OR engrossing every Will, brought to be engrossed after the Rate of 8 s. a Skin of Parchment                                                                                                                              |       |    | 0        | 0 out intra        |
| For exhibiting an Inventory                                                                                                                                                                                                        | 0     | 1  | 60       | 1 6                |
| For the engrossing every Inventory and Accompt in Parchment, brought to be engrossed 2 s. per Pres                                                                                                                                 |       |    | 0        | 0 out intra        |
| For the Probate of a Testament which is not brought engrossed, 1 l. Sterl. and to the Register, 6 s. 8d. the Goods amounting to 100 l. but if the Goods amount to 40 l. or under, to the Judge 10 s. and to the Register 3 s. 4 d. |       |    |          | ut intra out intra |
| For every <i>Quietus est</i> , upon an Accompt made by an Executor or Administrator                                                                                                                                                |       |    | 0        | 10 00 3 4          |

## Fees due to the Apparitor.

## Apparitor's

## Fees.

l. s. d.

|                                                                                                                                                                                                                                                                                                                                                                              |          |    |   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----|---|
| <b>I</b> <i>mprimis</i> , For his Attendance and Service                                                                                                                                                                                                                                                                                                                     | 0        | 0  | 0 |
| <i>Item</i> , At the Consecration of a Bishop                                                                                                                                                                                                                                                                                                                                | 0        | 10 | 0 |
| <i>Item</i> , For every Institution                                                                                                                                                                                                                                                                                                                                          | 0        | 1  | 0 |
| <i>Item</i> , For every Will and Administration                                                                                                                                                                                                                                                                                                                              | 0        | 1  | 0 |
| <i>Item</i> , For every Sentence                                                                                                                                                                                                                                                                                                                                             | 0        | 1  | 0 |
| <i>Item</i> , For every <i>Quier' est</i>                                                                                                                                                                                                                                                                                                                                    | 0        | 1  | 0 |
| <i>Item</i> , For the Oath of every one sworn in Court                                                                                                                                                                                                                                                                                                                       | 0        | 0  | 4 |
| <i>Item</i> , For serving every Citation, <i>Vius &amp; Modis</i>                                                                                                                                                                                                                                                                                                            | 0        | 1  | 0 |
| <i>Item</i> , For serving every Citation in Town                                                                                                                                                                                                                                                                                                                             | 0        | 0  | 6 |
| <i>Item</i> , For serving every Citation, <i>ad dicend</i><br><i>Causam quare Excommunicari non debet</i> ,<br>and every other Decree of Court                                                                                                                                                                                                                               | 0        | 1  | 0 |
| <i>Item</i> , For Serving every Decree or Citation,<br>whatsoever in the Country 2 <i>d.</i> per Mile,<br>over and above the Rates abovesaid: But<br>with this Caution, that for Matter of In-<br>stance, the Apparitor to have no Fee for<br>Serving, unless at the Request of the Party<br>Plaintiff, who must pay the same without<br>Allowance in his Costs of the Party | ut intra |    |   |
| <i>Item</i> , For every Parson, Vicar or Curate, sum-<br>moned to appear at the Bishops annual Vi-<br>sitation 3 <i>d.</i> per Church                                                                                                                                                                                                                                        | ut intra |    |   |
| <i>Item</i> , For summoning the Church Wardens<br>of every Parish to a Visitation 6 <i>d.</i>                                                                                                                                                                                                                                                                                | 0        | 0  | 6 |
| <i>Item</i> , For the Purgation of every Party detec-<br>ted for any Crime whatsoever                                                                                                                                                                                                                                                                                        | 0        | 1  | 0 |
| <i>Item</i> , For every Excommunication carried<br>forth against contemptuous Persons within<br>the Town 4 <i>d.</i> to the Country 2 <i>d.</i> a Mile                                                                                                                                                                                                                       | ut intra |    |   |

*Item,*

Apparitor's  
Fees.

l. s. d.

- Item*, For every Sequestration, carrying and delivering made out of the Fruits of any Benefice, in *usum Domino Regni aut prex Incumb'* 2 d. a Mile } *ut intra*
- Item*, For every Minister's appearing at the Archbishop's Triennial Visitation 0 1 0

*Fees Due to be paid unto the Keeper of his Grace's Archiepiscopal Seal.*

- I**mprimis, For his Grace's Archiepiscopal Seal fixed unto every Lease, made by the Lord Archbishop of *Dublin*, his Grace, of any Lands, Tenements, Tithes, or other Grants } 0 10 0
- Item*, For every Collation or Institution unto an Ecclesiastical Benefice 0 10 0
- Item*, For the Sale fixed unto Letters of Deacon 0 6 8
- Item*, The like for Letters of full Orders 0 6 8

*Fees Due to be paid to the Keeper of the Consistorial Seal.*

- I**mprimis, For every Citation or Decree of what Nature soever } 0 0 4
- Item*, For every Will, Administration, Letter of *Tutel'* Exemplifications, Commissions, Licences, Certificates, and such like } 0 1 0

